



## Remediation and Redevelopment Division

*Michigan Department of Environmental Quality*

Interim Final – December 2007

### **RRD OPERATIONAL MEMORANDUM No. 6**

#### **SUBJECT: PART 213 INSTITUTIONAL CONTROLS AND NOTICE REQUIREMENTS**

Key definitions for terms used in this document:

<b>CAP:</b>	Corrective Action Plan as defined by Section 21309a of NREPA
<b>CR:</b>	Closure Report as defined by Section 21312a of NREPA
<b>Criteria or criterion:</b>	Includes the cleanup criteria for Part 201 of NREPA and the Risk-Based Screening Levels (RBSLs) as defined in Part 213 of NREPA and R 299.5706a(4)
<b>FAR:</b>	Final Assessment Report as defined by Section 21311a of NREPA
<b>IC:</b>	Institutional Control, including Notice of Corrective Action, Notice of Aesthetic Impacts, Restrictive Covenant, or Ordinance
<b>LUG:</b>	Local Unit of Government as defined by Section 21302(i) of NREPA
<b>MDEQ:</b>	Michigan Department of Environmental Quality
<b>NAI:</b>	Notice of Aesthetic Impact
<b>NCA:</b>	Notice of Corrective Action
<b>NREPA:</b>	The Natural Resources and Environmental Protection Act, 1994 PA 451, as amended
<b>O/O:</b>	Owner or Operator as defined by Section 21303(a) or (b) of NREPA
<b>Part 201</b>	Part 201, Environmental Remediation, of NREPA
<b>Part 213:</b>	Part 213, Leaking Underground Storage Tanks, of NREPA
<b>PM:</b>	Project Manager
<b>QC:</b>	Qualified Underground Storage Tank Consultant as defined by Part 215, Refined Petroleum Fund, of NREPA
<b>RC:</b>	Restrictive Covenant
<b>RRD:</b>	Remediation and Redevelopment Division
<b>Site:</b>	Site as defined by Section 21303(f) of NREPA

#### **PURPOSE**

This Operational Memorandum provides direction and forms to be used by the O/O or a QC retained by the O/O for the preparation of ICs and public notice requirements for corrective actions under Part 213.

#### **INSTITUTIONAL CONTROL REQUIREMENTS**

Part 213 requires the implementation of ICs for all closures that are not unrestricted residential. Such ICs must be consistent with the land use-based cleanup criteria proposed for the corrective action. ICs impose land or resource use restrictions to: (1) limit or prohibit activities that interfere with the integrity or effectiveness of corrective action activities; (2) limit or prohibit activities that may result in exposure to a hazardous substance at a site; (3) provide notice about the presence of a hazardous substance at a site. A description of the appropriate use of the notice for corrective action, restrictive covenants, ordinances, and other alternative IC mechanisms follows. Additional notes applicable to all IC mechanisms are provided after the discussion of the individual mechanisms.



**Notice of Corrective Action**

Pursuant to Section 21310a(1) of NREPA:

*If the corrective action activities at a site result in a final remedy that relies on tier I commercial or industrial criteria, a notice of corrective action (NCA) must be recorded with the register of deeds for the county in which the site is located prior to submittal of a CR under Section 21312a. A NCA must be filed only by the property owner or with the express written permission of the property owner. The form and content of the NCA is subject to approval by the MDEQ. A NCA must state the land use that was the basis of the corrective action selected by a consultant retained by the O/O. The NCA must state that if there is a proposed change in the land use at any time in the future, that change may necessitate further evaluation of potential risks to the public health, safety, and welfare and to the environment and that the MDEQ must be notified regarding any proposed change in the land use.*

The intent of the NCA is to limit property uses to those consistent with the commercial or industrial exposure assumptions used by the MDEQ in the development of the generic land-used based cleanup criteria. The attached NCA instructions and form (Form EQP 3853) has been developed to address the requirements of Section 21310a(1). The content of the NCA must include a summary of the corrective action activities for the site, and a description of allowable uses for the land use category that was the basis of the corrective action. The NCA must include a property description and survey of the area where the land use restriction applies.

An unrestricted residential land-use based closure is acceptable for all zoning categories. A closure other than unrestricted residential must match the zoning category. Therefore, preparation of the NCA must include a review of the uses allowed by local zoning ordinances for those land use categories, and if the local zoning ordinance allows for uses with greater exposure potential than the generic exposure assumptions used to develop the commercial or industrial criteria (e.g., uses that would house, educate, or provide care for children, the elderly, infirm, or other sensitive populations) those uses must be specifically prohibited in a restrictive covenant rather than an NCA. Documentation of zoning must be provided with the FAR or CR, and must include a map or other documentation (e.g., current property record card) that shows the zoning status of the site, all properties affected by the release, and all adjacent properties. For each designated zoning category, the documentation must also include the text of the zoning code or ordinance for that designation. If the text for the zoning category refers to any other categories the text for those categories must also be included. If the property is not zoned, the land use restrictions must limit property uses to those consistent with the exposure assumptions for the commercial or industrial criteria and current land uses.

If the NCA is for on-site contamination, the NCA may be filed with the appropriate Register of Deeds for recording prior to obtaining MDEQ approval of the document. A copy of the recorded NCA must be included in the FAR or CR and submitted to the MDEQ. If, upon MDEQ review of the content, the NCA is determined to be deficient, the NCA must be corrected and re-recorded with the appropriate Register of Deeds using a different MDEQ Reference Number. The previously recorded NCA must be rescinded, upon the written approval by the MDEQ of the replacement document, and documentation provided to the MDEQ that the replacement document was properly recorded.

If the NCA is for contamination that has migrated off site, the CAP must not be implemented until it is reviewed (including a review of the NCA) and determined by the MDEQ to be in compliance with Part 213, pursuant to Section 21311a(2) of NREPA. The CAP, containing copies of the NCA, must be included in the FAR and submitted to the RRD PM for review and approval prior to



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implementation of the CAP. Prior written approval from the MDEQ is required before recording an NCA that addresses off-site property. After the NCA for contamination that has migrated off-site is submitted and approved as part of a FAR, and corrective actions have been completed, a certified CR that includes documentation demonstrating the proper recording of the NCA must be submitted to the MDEQ.

**Restrictive Covenant**

Pursuant to Section 21310a(2) of NREPA:

*If corrective action activities at a site do not result in a final remedy that meets Tier I commercial or industrial criteria and cannot rely on a NCA, a restrictive covenant (RC) must be recorded with the register of deeds for the county in which the property is located within 30 days from submittal of the FAR pursuant to section 21311a, unless otherwise agreed to by the MDEQ. The RC must be filed only by the property owner or with the express written permission of the property owner. The restrictions must run with the land and be binding on the owner's successors, assigns, and lessees. The restrictions must apply until the MDEQ determines that regulated substances no longer present an unacceptable risk to the public health, safety, or welfare or to the environment. The RC must include a survey and property description which defines the areas addressed by the RC and the scope of any land use or resource use limitations.*

*The form and content of the RC are subject to approval by the MDEQ and must include provisions to accomplish all of the following:*

- (a) Restrict activities at the site that may interfere with corrective action, operation and maintenance, monitoring, or other measures necessary to assure the effectiveness and integrity of the corrective action.*
- (b) Restrict activities that may result in an unacceptable exposure.*
- (c) Prevent a conveyance of title, an easement, or other interest in the property from being consummated by the property owner without adequate and complete provision for compliance with the RC.*
- (d) Grant to the MDEQ and its designated representatives the right to enter the property at reasonable times for the purpose of determining and monitoring compliance with the RC, including but not limited to the right to take samples, inspect the operation of the corrective action measures, and inspect records.*
- (e) Allow the state to enforce restrictions set forth in the covenant by legal action in a court of appropriate jurisdiction.*
- (f) Describe generally the uses of the property that are consistent with the RC.*

The intent of the RC is to clearly identify, with the use of a survey and property description, areas addressed by the restriction, and the scope of land or resource use restrictions. The attached RC instructions and form (Form EQP 3854) has been developed to include provisions that address all of the requirements of Section 21310a(2).

The content of the RC must include a description of allowable uses for the land use category that was the basis of the corrective action. An unrestricted residential land-use based closure is acceptable for all zoning categories. A closure other than unrestricted residential must match the zoning category. Therefore, preparation of the RC must include a review of the uses allowed by local zoning ordinances for those land use categories, and if the local zoning ordinance allows for uses with greater exposure potential than the generic exposure assumptions used to develop the criteria (e.g., in areas zoned commercial or industrial uses that would house, educate, or provide care for children, the elderly, infirm, or other sensitive populations) those uses must be specifically



prohibited with the RC. Documentation of zoning must be provided with the FAR or CR, and must include a map or other documentation (e.g., current property record card) that shows the zoning status of the site, all properties affected by the release, and all adjacent properties. For each designated zoning category, the documentation must also include the text of the zoning code or ordinance for that designation. If the text for the zoning category refers to any other categories the text for those categories must be included. If the contamination left in place would be protective of a use inconsistent with the current zoning, (for example for a commercial or industrial zoned property where groundwater contamination exceeds residential drinking water criteria and that exposure is reliably restricted) the RC may include language to allow residential use with future zoning changes. If the property is not zoned, the land use restrictions must limit property uses to those consistent with the exposure assumptions for the current use.

If the RC is for on-site contamination, the RC may be filed with the appropriate Register of Deeds for recording prior to obtaining MDEQ approval of the document. The CAP, including a copy of the recorded RC, must be included in the FAR or CR and submitted to the MDEQ. If, upon MDEQ review of the content, the RC is determined to be deficient, the RC must be corrected and re-recorded with the appropriate Register of Deeds using a different MDEQ Reference Number. The previously recorded document must be rescinded upon the written approval by the MDEQ of the replacement document and documentation provided to the MDEQ that the replacement document was properly recorded.

If the RC is for contamination that has migrated off site, the CAP must not be implemented until it is reviewed (including a review of the RC) and determined by the MDEQ to be in compliance with Part 213 pursuant to Section 21311a(2) of NREPA. The CAP, containing a copy of the RC, must be included in the FAR and submitted to the RRD PM for review and approval prior to implementation of the CAP. Prior written approval of the MDEQ is required before recording a RC that addresses contamination that has migrated or will migrate off site. If the RC for off-site contamination migration is submitted and approved as part of a FAR, a certified CR must be submitted upon completion of the corrective actions. If the only corrective action remaining to be implemented is the recording and assuring compliance with the RC, documentation of the recording may be submitted as part of the CR.

### Ordinances

Pursuant to Section 21310a(3) of NREPA:

*If a consultant retained by the O/O determines that exposure to regulated substances may be reliably restricted by a means other than a RC and that imposition of land use or resource use restrictions through RCs is impractical, the consultant may select a CAP that relies on alternative mechanisms. Mechanisms that may be considered under this subsection include, but are not limited to, an ordinance that prohibits the use of groundwater in a manner and to a degree that protects against unacceptable exposure to a regulated substance as defined by the cleanup criteria identified in the CAP. An ordinance that serves as an exposure control must include both of the following:*

- (a) A requirement that the local unit of government notify the MDEQ 30 days before adopting a modification to the ordinance or the lapsing or revocation of the ordinance.*
- (b) A requirement that the ordinance be filed with the register of deeds as an ordinance affecting multiple properties.*



The use of any institutional control that addresses contaminants that have migrated off-site requires MDEQ review and approval that the corrective action is in compliance with Part 213, prior to implementation of the CAP. If a corrective action includes an ordinance as an alternate IC mechanism it is imperative that early in the development of the CAP that Mr. Stephen Cunningham, Cadillac District Office, RRD, MDEQ, be contacted for direction. Mr. Cunningham can provide details on required content and function of the ordinance. He may be reached at 231-775-3960, Extension 6305, or at [cunnings@michigan.gov](mailto:cunnings@michigan.gov).

If a CAP proposes to rely on an ordinance that has not yet been enacted by a LUG, the draft ordinance, with written confirmation from the LUG that it is willing to enact an ordinance substantially like the ordinance contained in the CAP, must be included with the FAR submitted to the RRD PM for review and approval prior to implementation of the CAP. If a CAP proposes to rely on an ordinance that has already been enacted, a copy of the ordinance must be included with the FAR submitted to the RRD PM for review and approval prior to implementation of the CAP.

The MDEQ does not encourage or discourage LUGs to enact an ordinance as an institutional control. It is the responsibility of the LUG to determine if enacting a groundwater use restriction ordinance is in its best interests. There are instances where the MDEQ is requested to review a draft ordinance prior to development of the corrective action. In those instances the review of the draft ordinance should not be construed by any party as an indication of the MDEQ's support of an ordinance as part of the preferred remedy for the site.

Before the MDEQ can approve a local ordinance, it must make a finding that it is impractical to accomplish the necessary use restrictions through RCs. The person proposing an ordinance to the MDEQ must generally document what efforts have been made to secure the necessary RCs, including offers of reasonable compensation to the affected property owners. The MDEQ will review this information to determine if it is impractical to secure deed restrictions. In a case where a large number of properties is affected (e.g., more than 20), the MDEQ will not require that the liable party contact each property owner before seeking approval of an IC.

If the MDEQ has determined that the impracticality test has been met, the MDEQ must determine, on a site-by-site basis, whether a local ordinance is reliable and effective in controlling exposure to groundwater at a particular location, and evaluate the degree of risk if the ordinance were not enforced or lapsed. The MDEQ will determine whether the ordinance is effective in eliminating unacceptable risks in each relevant exposure pathway, depending on the concentration of hazardous substances present, the different ways that exposure to those contaminants may occur, and the scope of restrictions in the ordinance. A risk or exposure is unacceptable if an actual or reasonably foreseeable future exposure to hazardous substances will occur at concentrations exceeding applicable criteria. If there are unacceptable exposures that are not adequately controlled by the local ordinance, the CAP must provide other means of eliminating the unacceptable exposures.

The area covered by the ordinance must be clearly delineated, in both vertical and horizontal dimensions. In cases where there is more than one water-bearing formation under the property, the ordinance must indicate whether all or only certain formations are covered by the restriction(s). When making that decision, consideration should be given to the importance of the unaffected aquifer(s) (i.e. is an aquifer the community's only source of water for its municipal supply?) and the likelihood that the unaffected aquifer may be contaminated by drilling through the contaminated aquifer to install a well in a deeper, uncontaminated aquifer. There are well construction techniques that can prevent this type of cross-contamination from occurring, but



the ability of a LUG to effectively oversee these drilling activities to assure that these techniques are properly carried out should be factored into its decision about the nature and extent of the restrictions under the ordinance.

The area covered by the ordinance must consider contaminant migration and both the influence on the plume and potential exposures related to nearby water withdrawals. The restricted area must include the current plume, the anticipated area of plume expansion (if applicable), and often may require a buffer zone. The size of the buffer zone will be determined by the MDEQ on a site-specific basis using professional judgment and considering the rate of groundwater movement, the concentration gradients in the plume, uncertainties in site characterization, and the potential exposure that could occur under various withdrawal scenarios. There may be situations where more than one buffer zone boundary will need to be established at a site. This can occur when there is the potential for more than one pumping rate or withdrawal volume to be applied to the aquifer. The MDEQ views a buffer zone as necessary in most cases to assure reliable restriction of unacceptable exposures, since there is some degree of uncertainty associated with most site characterization work. If fate and transport models are used to predict migration, sufficient environmental monitoring must be conducted to confirm the validity of those predictions.

The area covered by use restrictions must be identified on a map of appropriate scale, and be based on reproducible, unambiguous boundaries. The map must be part of the ordinance. However, if ordinance restrictions apply throughout an entire jurisdiction (e.g. city), a map is not required.

A large number of exceptions to prohibiting groundwater use (e.g., dewatering wells, irrigation wells), or exceptions that have a high potential for exposures or that require a large degree of geological review, should be avoided. Any exceptions that require a significant hydrogeological review should also contain a process and identify resources for developing that information. Ordinances should be crafted to minimize the number of exceptions that rely on future determinations. Allowing for a significant number of potential future determinations decreases the reliability and effectiveness of the ordinance and may prohibit approval of the ordinance as an exposure control. The burden for future determinations, if it is necessary to include any, should be placed on an entity that is qualified to make the necessary technical judgments and who will be objective (e.g. an environmental consulting firm engaged by the local unit of government). Such an entity should be required to provide and maintain documentation of their qualifications.

When reviewing the uses of groundwater that are allowable under a proposed ordinance, the MDEQ will consider whether those uses may render the ordinance ineffective in controlling exposure, and whether those uses could affect the plume in a way that precludes reasonably predicting plume behavior over time. Certain uses, such as agricultural or golf course irrigation or large volume cooling water withdrawals, make it more difficult to predict the future of a groundwater contaminant plume. While the MDEQ may accept an ordinance even if all potential exacerbating uses are not prohibited, local officials should consider the consequence of groundwater contamination on other activities, even if those activities will not result in exposure to the contaminated groundwater. For example, a plume that is allowed to remain in place under an ordinance may be affected by a golf course irrigation well or industrial cooling water well that is located outside the area where drinking water uses are prohibited. The person who operates such a well may be liable for costs of exacerbating the groundwater contamination or for damages under common law. Local officials must balance the needs of all



groundwater users in an area when considering groundwater use restrictions, even in a limited area.

#### **Other Alternate IC Mechanisms**

Pursuant to Section 21310a(4) of NREPA:

*If a mechanism other than a NCA, an ordinance, or a RC is requested by a consultant retained by an O/O and the MDEQ determines that the alternative mechanism is appropriate, the MDEQ may approve of the alternate mechanism.*

The use of any alternative IC mechanism must be approved by the MDEQ. The RRD may accept alternative mechanisms that reliably protect against an unacceptable exposure to regulated substances pursuant to Section 21310a(4) of NREPA. The public notice provisions of Sections 21309a(3) and 21310a(5) of NREPA are both required when alternate IC mechanisms to control land use are applied.

#### **Notice of Aesthetic Impact**

The NAI may be used as a pre-approved IC in place of a RC when the only cleanup criteria exceeded at the site are criteria based on aesthetic impacts and the MDEQ has approved the corrective action on a site-specific basis. The attached NAI form (Form EQP 3887) has been prepared to address this situation. The CAP, containing a copy of the NAI, must be included in the FAR and submitted to the RRD PM for review and approval prior to implementation of the CAP. Prior written approval from the MDEQ is required before recording an NAI. After the NAI is submitted and approved as part of a FAR, and corrective actions have been completed, a certified CR that includes documentation of the recorded NAI must be submitted to the MDEQ. If the only corrective action remaining to be implemented as part of the FAR is the recording of the NAI, documentation of the recording may be submitted as part of the CR.

#### **Alternate IC Mechanisms For Groundwater Contamination Above Drinking Water Tier 1 Residential Criteria Under Existing Dedicated Public Highways Right-of-Ways**

The Michigan Department of Transportation (MDOT) Individual Permit Process for allowing contaminated material to remain within a state trunk line right-of-way may be an acceptable alternative mechanism depending upon the contaminated materials the corrective action addresses. The MDEQ has determined that this mechanism is acceptable for allowing groundwater contamination above the Drinking Water Tier I criteria. The existence of a dedicated non-MDOT highway right-of-way may provide an adequate exposure control for groundwater contamination only for the drinking water pathway. Decisions on whether a non-MDOT highway right-of-way provides an acceptable alternative mechanism will require a site-by-site MDEQ determination. To allow contaminated groundwater or soils that pose exposure risks for pathways other than drinking water use to remain in a right-of-way will require a site-by-site MDEQ determination for whether the alternative mechanism provides an effective and reliable restriction.

For corrective action that proposes the use of an MDOT permit or dedicated highway as an alternative IC a CAP containing the following information must be included in the FAR and submitted to the RRD PM for review and approval prior to implementation of the CAP.

- A demonstration whether contaminated groundwater will migrate beyond the right-of-way at concentrations in excess of Tier 1 residential drinking water criteria, and if so, documentation that appropriate ICs are proposed for affected parcels.
- For reliance on the MDOT permit process the CAP must include the completed MDOT permit application form, with property survey and legal description, including the location of



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permanent markers as required by MDOT. This application should not be submitted directly to MDOT.

- For reliance on a non-MDOT dedicated highway (any county, city or village street, or road, utilized and maintained for public travel) the CAP must include documentation that
  - The highway right-of-way is developed and maintained as a highway.
  - The highway authority has been contacted and has no plans to relocate, vacate, or abandon the portion of the highway where the alternate IC mechanism would apply.
  - Documentation that all other relevant exposure pathways have been evaluated and there are no potential exposures above Tier 1 residential criteria.

Questions regarding alternative mechanisms which may be applicable under Section 21310a(4) of the NREPA should be directed to the RRD PM in the district office where the site is located.

**ADDITIONAL NOTES FOR ALL IC MECHANISMS**

Imposition of an IC is a corrective action. Every site with an IC must be associated with a CAP that has been submitted as part of a FAR or CR, by referencing the report date in the IC.

An NCA, RC or NAI must be filed only by the current property owner or with the express written consent of the current property owner. The MDEQ does not encourage or discourage property owners to agree to restrictions, it is the responsibility of the property owner to determine if accepting any restriction is in their best interest. The property owner may provide a written statement that they will agree to the placement of the restrictions upon approval of the MDEQ of a FAR. Easement holders must also provide express written consent to the imposition of any land or resource use restriction other than an ordinance or restriction on the use of groundwater for drinking water.

For a site where only an on-site NCA or RC is necessary to address remaining contamination, a consultant retained by the O/O may determine sufficient corrective action has been undertaken to address the contamination and may complete a site CR omitting interim steps consistent with Section 21307a of NREPA. The CR summary of corrective action activities must contain sufficient information regarding the corrective actions implemented, including the extent of contamination and pathway evaluation to determine that the corrective action is in compliance with Part 213. The CR must be dated such that a report date can be included in the NCA or RC as a reference to the documents associated with the corrective actions implemented for the site. However, the date the CR is certified must be subsequent to the date the IC is recorded. For example, a CR not yet certified could be completed and dated December 29, 2006. An IC that references the December 29, 2006 CR could be filed with the register of deeds January 5, 2007. A copy of the recorded IC could be received from the register of deeds February 5, 2007. The CR could be then be certified by the QC for the O/O on February 5, 2007 and submitted to the MDEQ.

Although it is appropriate to restrict activity that may interfere with the integrity of an implemented corrective action, it is not appropriate to transfer obligations for monitoring, and/or operation and maintenance to any future property owner. Examples of such obligations are the responsibility for maintaining an exposure barrier. These obligations remain with the party who implements the FAR. The MDEQ acknowledges that some of these activities may coincide with due care obligations. However, the schedule for monitoring, and/or operation and maintenance of the corrective action activities and conditions that would trigger additional corrective action must be included in the FAR.





For ICs that are intended to prohibit the use of the groundwater, it is important to review current uses of the groundwater which may need to be discontinued. For example, all existing wells should be identified and their abandonment considered in light of the proposed restriction. In general, any well whose future installation would be prohibited by the IC, should be abandoned if it already exists. For larger areas involving multiple properties, identifying existing wells may require the use of surveys and the review of billing records.

For ICs that are intended to prohibit the use of groundwater, the current and potential uses of groundwater being restricted must be clearly identified. This is most effectively done by identifying both prohibited uses and allowable uses. The MDEQ's experience has shown that a total prohibition on groundwater use is seldom practical. This is more true as the size of the restricted area increases. At a minimum, exceptions that allow for groundwater monitoring wells must be provided. Exceptions to allow for construction dewatering wells and wells used for nonconsumptive purposes such as irrigation are often prudent, provided that these wells do not result in the exacerbation of the contaminant plume or result in unacceptable exposures. Exceptions for dewatering wells must be conditioned on the proper handling and disposal of the water that is removed. It is helpful for prohibited and allowed uses to be reviewed in relation to the exposure pathways that are considered under Part 213 (e.g., ingestion, and dermal contact).

The MDEQ considers the imposition of ICs that impose drinking water use restrictions in areas that are located partially or fully within designated wellhead protection zones to be inconsistent with the concept of wellhead protection and, therefore, generally unacceptable. However, such ICs may be approved on a case-by-case basis provided it is demonstrated to the satisfaction of the MDEQ that the contamination left in place is not, and will not become, a threat to the wellhead drinking water supply.

The FAR and/or CR cover sheet should clearly identify if an IC is proposed and if the IC pertains to off-site migration of regulated substances. The corrective action section of the FAR and/or CR must identify the IC mechanism utilized and discuss the appropriateness and effectiveness of the mechanism to address the exposure pathways.

An IC must only apply to property or areas of property that have been properly characterized. An NCA or NAI must only apply to property or areas of property that have been properly characterized and determined meet the applicable criteria. If the NCA, RC, or NAI will apply to the entire property, a legal survey of the property prepared by a licensed surveyor must be provided as Exhibit 2 to the document; however, a mortgage survey of the entire property, if available, may be used to satisfy this requirement. If the NCA, RC, or NAI will apply to only a portion of the property where the contamination currently exists or will exist, a legal description of the property and a legal description and legal survey of each portion of the property subject to the restriction must be provided as Exhibit 2 to the document. The survey must be prepared by a licensed surveyor, and must distinguish the areas of the property that will be subject to the restrictions and depict the general locations of the key features of the corrective action (e.g., monitoring wells, direct contact exposure barrier).

Approval by the MDEQ of any IC does not release the O/O as a liable party from any statutory or common law obligations or claims which may be held by third parties or from due care obligations pursuant to Section 20107a of the NREPA.



## FORMS

Section 21316 allows the MDEQ to "create and require the use of forms to assist in the reporting requirements provided in this part." RRD has created and requires the use of the attached Notice of Corrective Action form, EQP3853; Declaration of Restrictive Covenant form, EQP3854; or Notice of Aesthetic Impact form, EQP3887, as applicable. The forms are available on the RRD's home page at <http://www.michigan.gov/deqrrd>. Any modifications to the form or language in these attachments must be approved by the MDEQ. Such approval, if granted, will be based upon a review by the RRD, Compliance and Enforcement Section.

Prior to filing the NCA, RC, or NAI, the O/O, or QC retained by the O/O, must obtain an MDEQ Reference Number which must be prominently displayed on the first page of the document. The MDEQ Reference Number can be obtained from the RRD, Compliance and Enforcement Section, at 517-373-7818. The form and content of the NCA, RC, and NAI is subject to approval by the MDEQ.

If not submitted as part of a FAR or CR, the O/O or QC retained by the O/O must submit documentation (e.g., a date-stamped receipt from the Register of Deeds) that the NCA, RC, or NAI for on-site contamination or off-site migration, or both, has been filed for recording with the appropriate Register of Deeds within the prescribed time, to the appropriate RRD District Office at the address listed on form EQP4410. Within 30 days of receipt of the recorded NCA, RC, or NAI from the appropriate Register of Deeds, the O/O or QC retained by the O/O must provide a copy of the NCA, RC, or NAI, including liber and page numbers on each page of the document, to the appropriate RRD District Office at the address listed on form EQP4410.

## NOTICE REQUIREMENTS OF SECTIONS 21309a(3) AND 21310a(5) OF THE NREPA

### NOTICE TO IMPACTED PARTIES OF CORRECTIVE ACTIONS

Pursuant to Section 21309a(3) of NREPA:

*If a CAP prepared under this section does not result in an unrestricted use of the property for any purpose, the O/O or a consultant retained by the O/O must provide notice to the public by means designed to reach those members of the public directly impacted by the release and the proposed corrective action. The notice must include the name, address and telephone number of a contact person. A copy of the notice and proof of providing the notice must be submitted to the MDEQ. The MDEQ must ensure that site release information and CAPs that do not result in an unrestricted use of property are made available to the public for inspection upon request.*

In the event that property owned or operated by a person other than the O/O has or will be impacted by the release(s) from an underground storage tank and the concentration of contamination proposed to remain on the property exceeds the Tier 1 unrestricted residential criteria, the O/O or QC retained by the O/O must notify those persons directly impacted by the release and the proposed corrective action pursuant to Section 21309a(3) of the NREPA. If the CAP proposes to attain unrestricted use of the property but the corrective action will take more than 5 years, the notice of corrective actions must be provided to impacted parties.

Persons required to provide notice to impacted parties pursuant to Section 21309a(3), but who have not yet made that notice, must provide a notice of migration under Part 201 to the MDEQ and to impacted property owners using form EQP 4482 within the timeframes required in Part 201.



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Completing the notice of migration under Part 201 does not alleviate the obligation to provide the notice to impacted parties of corrective action under Part 213.

The Section 21309a(3) notice to impacted parties must use form EQP3852 (attached) or other written notification that provides all of the same information found in form EQP3852. Notices may be provided to each person impacted either on an individual basis, by providing the name and address of their property on form EQP3852 (or equivalent notification), or on a group basis, by sending each person the same notice which lists all of the properties impacted by the release. Placing the notice in a local paper of general circulation would not meet the intent of this section, as personal notification is required. However, the O/O may at his/her option place a notice in the newspaper in addition to personal notification.

The notice(s) must be provided to the persons directly impacted by the release or corrective action prior to submittal of the FAR or CR, as applicable. A copy of the notice(s) and documentation that the notice has been provided to the persons impacted must be included as part of the FAR or CR submitted to the MDEQ, as applicable. The QC must record that this notification was made on the appropriate report cover sheet or supplemental report cover sheet. Documentation that notice has been provided may be in the form of a certified mail return receipt request card completed by the recipient of the notice, or other means of documentation approved by the RRD.

Members of the public directly impacted means owners of property interests whose soil or groundwater exceeds Tier 1 residential RBSLs due to the release; this may include, but is not limited to, parties who fall within the boundaries of an ordinance (including any properties within the buffer-zone), easement holders, tenants, utilities, and highway authorities. If it is determined that there are no members of the public that are directly impacted by the release, an explanation should be provided in the FAR or CR, as applicable. The O/O or a QC retained by the O/O must submit to the RRD all reports as required by Part 213, and the RRD will make them available for public inspection upon request. The impacted party may also obtain a copy of these reports from the O/O.

**NOTICE TO LUG(s)**

Pursuant to Section 21310(a)(5) of NREPA:

*A person who implements corrective action activities must provide notice of the land use restrictions that are part of the CAP to the local unit of government in which the site is located within 30 days of submittal of the CAP, unless otherwise approved by the MDEQ.*

Notice to the LUG of the land use restrictions implemented as part of the corrective action for a site must be provided on the attached form EQP3872 pursuant to Section 21316. Notices to the LUG must be provided for all CAPs that involve land use restrictions. Therefore, the notice to the LUG must be provided for any CAP that does not propose to attain unrestricted residential Tier I criteria, including CAPs where the land use restrictions are limited to the boundaries of the property. The O/O or QC retained by the O/O must provide notice to the LUG's (city, village, or township) clerk. In the event the groundwater exceeds the Tier 1 residential criteria, the O/O or QC retained by the O/O must also provide notice to the County or District Public Health Department.

If a copy of the notice to the LUG is submitted and approved as part of a FAR, the O/O must, upon completion of the corrective actions, submit a certified CR to the MDEQ that includes the documentation that notice was provided to the LUG within 30 days, or otherwise MDEQ approved



timeframe, of approval of the FAR. If a copy of the notice to the LUG is submitted and approved as part of a CR, the CR shall not be in compliance with the requirements of Part 213 until the O/O or QC retained by the O/O submits documentation acceptable to the MDEQ that notice has been provided to the LUG. The QC must record on the appropriate report cover sheet or supplemental report cover sheet that the notice to the LUG was made. Documentation that the notice to the LUG has been provided may be in the form of a completed certified mail, return receipt request card completed by the LUG and the County/District Public Health Department, if applicable, or by other means of documentation approved by the RRD.

If a LUG who receives notice objects to the IC mechanism, and if the report has not previously been audited, the RRD shall perform a review of the corrective actions undertaken to determine if the corrective action is appropriate and protective of the public health and the environment consistent with the requirements under Part 213. The RRD's concurrence of the corrective action activities undertaken does not supersede any additional requirement that may be legally imposed by a LUG or other state agency.

Andrew W. Hogarth, Chief  
Remediation and Redevelopment Division

12/13/07

Date

The following document is rescinded with the issuance of this operational memorandum:

- Storage Tank Division Operational Memorandum 12, Institutional Controls & Public Notice Requirements and Procedures, dated July 1, 2002

This memorandum and its attachments are intended to provide guidance to foster consistent application of Part 201 and Part 213, and the associated administrative rules. This document is not intended to convey any rights to any parties nor itself create any duties or responsibilities under the law. This document and matters addressed herein are subject to revision.



NOTICE OF CORRECTIVE ACTION  
INSTRUCTIONS FOR FORM EQP3853

This document provides instruction for Form EQP3853 which must be used in compliance with Section 21310a(1) and Section 21316 of NREPA<sup>1</sup>, when the corrective action activities at a site result in a final remedy that relies on Tier I commercial (except Commercial Subcategory I) or industrial criteria.

The content of the Notice of Corrective Action (Notice) is subject to approval by the Michigan Department of Environmental Quality (MDEQ). If the Notice is found to be deficient, it must be corrected and re-recorded with the Register of Deeds. In accordance with Section 21311a(2) of the NREPA, if the Notice addresses contamination that has migrated or will migrate off site, MDEQ approval and permission of affected property owner(s), including easement holders, of the Notice must be obtained prior to recording with the Register of Deeds. A copy of the Notice and proof of recording with the Closure Report (EQP3843) must be submitted to the appropriate MDEQ District Office at the address listed in form EQP4410. Form EQP3854 must be completed in its entirety. The recording requirements for instruments filed with Michigan county Register of Deeds offices are contained in Section 1 of the Recording Requirements Act, 1937 PA 103, as amended (Act 103), MCL 565.201. Act 103 is available at, <http://legislature.mi.gov/doc.aspx?mcl-act-103-of-1937>.

The lettered instructions below explain what information should be inserted into the corresponding blank shown on the Sample Notice of Corrective Action. Drafting notes and insertion directions appear as bold italicized print.

- A. MDEQ Reference No. NCA-RRD-213-[YR]-[number]  
*In order to ensure the protectiveness, enforcement, and tracking of institutional controls, all institutional controls require that an MDEQ Reference Number be assigned and predominantly displayed on the first page of the document. The MDEQ Reference Number can be obtained from the MDEQ, Remediation and Redevelopment Division [deq-rrd@michigan.gov](mailto:deq-rrd@michigan.gov) or 517-373-7818.*
- B. *Enter name of county where the site is located.*
- C. *Enter address location of property, including city or township and county.*
- D. *Enter the Part 213 site name and facility ID number.*
- E. *Enter the date of the Final Assessment Report (FAR) or Closure Report (CR).*
- F. *Enter the appropriate cleanup criteria:*
  - Commercial Subcategory II,
  - Commercial Subcategory III,
  - Commercial Subcategory IV
  - Industrial
- G. *Enter the name of owner or operator as defined by Section 21303 (a) or (b) of NREPA that is proposing the FAR or CR and the filing of this NCA.*

<sup>1</sup> Part 213 Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA)

- H. ***Insert the following sentence if the land or resource use restrictions apply only on-site:***

The adequacy of the corrective actions undertaken pursuant to the [FAR or CR] may not have been reviewed by the MDEQ.

- I. ***Select the appropriate option based upon the proposed restricted area:***

***OPTION 1: To be used if the entire property is subject to the land and/or resource use restrictions provided in this NCA. Note: A mortgage survey of the Property may be used for this purpose if one is already available. Insert the following:***

Exhibit 2 provides a survey of the Property that is subject to the land and/or resource use restrictions specified in this Notice.

***OPTION 2: To be used if not all of the Property is subject to the land and/or resource use restrictions provided in this NCA. Note: In this case, a mortgage survey is not appropriate, and a survey and legal description for both the Property and the specific areas of the Property to be restricted is required. Insert the following:***

The "Survey of Property and Limits of Land and Resource Use Restrictions," attached as Exhibit 2, provides a survey and legal description of the Property and survey and legal descriptions that distinguish those portions of the Property that are subject to the land and resource use restrictions specified in this Notice.

- J. ***Insert a paragraph similar to the following example that briefly describes the nature of the regulated substances released, the affected media, and how restricting the land use will be effective to address unacceptable risks for all relevant pathways:***

***Example: Hazardous substances including benzene, toluene, ethyl benzene, xylenes naphthalene and trimethylbenzenes were released from an underground storage tank resulting in contamination of the Property. Soil and groundwater contamination remains present at levels that do not allow unrestricted use of the Property. Soil and groundwater contamination do not exceed criteria developed for the Commercial III land use category. Restricting the Property land use to uses consistent with the exposure assumptions for the Commercial III cleanup criteria will allow the use to be protective of the public health, safety, welfare and the environment. Any change in land uses would necessitate further evaluation of potential risks to the public health, safety welfare and the environment.***

- K. ***Enter as appropriate:***

as Owner of the Property  
with the express written permission of the Owner of the Property.

- L. ***Enter as appropriate:***

the Property  
portions of the Property designated in Exhibit 2.

- M. ***The person preparing the NCA must examine the zoning code or ordinance that applies to the property to determine what land uses are allowed under the zoning category(s). A closure other than unrestricted residential must match the zoning category. Preparation of the NCA must include a review of the uses allowed by the local zoning. If the Property's current zoning allows for uses with greater exposure potential than the generic exposure assumptions used by the MDEQ in the development of the land use-based cleanup criteria relied upon in the FAR or CR, (e.g., in an area zoned commercial a residential use such as apartments above an office or store, or any uses that would house, educate, or provide care for children, the elderly or infirm) those uses must be restricted in a RC rather than a NCA.***

N. *Insert one or more of the following acknowledgements or other acknowledgements, as required by site conditions.*

- (1) Surface and subsurface soils found on the Property must be managed in accordance with the requirements of Sections 20107a, 21304b, and 20120c of the NREPA and other applicable state and federal laws.
- (2) Contaminated groundwater is migrating under the Property from an off-site source and that use of the contaminated groundwater for any domestic or industrial purpose may pose an unacceptable risk.

O. *Insert the date as:*

{Day of the month}, day of, {month}, {year}.

P. *Insert the Notary Public Information as:*

Name of state  
County

Q. *Insert the appropriate form of acknowledgment set forth in Section 29 of the Michigan Notary Public Act, 2003 PA 238, as amended, MCL 55.289, (available at <http://legislature.mi.gov/doc.aspx?mcl-55-26>).*

*Example acknowledgment form for a corporation:*

*Acknowledged before me in \_\_\_\_\_ County, Michigan, on \_\_\_\_\_, \_\_\_\_\_ (year)  
by Mary Doe, president of X company, a Michigan corporation, for the corporation.*

R. *Print, type or stamp name of notary public.*

**CONSENT OF OWNER ATTACHMENT:**

*This form is only necessary if the current property owner and person signing the NCA are not the same person. This document provides the express written permission of the current property owner for recording.*

A. *Enter the name of current property owner.*

B. *Enter the name of the person recording the document.*

C. *Enter the name of the county where the property is located.*

D. *Insert Notary Public information as:*

Name of state  
County

E. *Complete the appropriate form of acknowledgment set forth in Section 29 of the Michigan Notary Public Act, 2003 PA 238, as amended, MCL 55.289,.*

F. *Print, type or stamp name of notary public.*

**EXHIBIT 1 LEGAL DESCRIPTION OF PROPERTY**

*This exhibit must provide the legal description of the property, including parcel identification numbers(s) of the Property.*

**EXHIBIT 2 SURVEY OF PROPERTY OR**

**SURVEY OF PROPERTY AND LIMITS OF LAND AND RESOURCE USE RESTRICTIONS**

*This exhibit must be titled as appropriate for the restricted area.*

***All surveys must: be conducted by a licensed surveyor; identify, clearly delineate, and graphically depict the spatial extent of all restricted areas in relation to the Property boundaries and the key features of the corrective action, including monitoring wells and permanent markers if required; and provide a legal description of the restricted areas of the Property.***

### **EXHIBIT 3 DESCRIPTION OF ALLOWABLE USES**

***This exhibit must be consistent with the generic exposure assumptions utilized in the FAR or CR under Section 21304a(2) of the NREPA or the alternative exposure assumptions used to derive site-specific criteria if approved in the FAR or CR. The allowable uses must be consistent with the property zoning. If the allowable uses under the local zoning code do not align with the land use categories described below, consult with the MDEQ project manager for assistance.***

***Insert the text of one of the following sections, shown un-bolded below, (i.e., Commercial Subcategory II, Commercial Subcategory III, Commercial Subcategory IV, Industrial Land Use Category, or Residential) verbatim in Exhibit 3. The details of the zoning code that is applicable to the property and the following general information regarding the categories must be carefully reviewed to select the appropriate category for the allowable uses.***

#### **INDUSTRIAL AND COMMERCIAL LAND USE CATEGORIES**

***Activities and uses are extremely variable within the industrial and commercial land uses. The information and general descriptions of allowable land use categories provided below is intended to provide guidance as to the land use and exposure assumptions relied upon by the Michigan Department of Environmental Quality (MDEQ) in developing the cleanup criteria for the specific land use category pursuant to Section 20120a of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. This information can be used to evaluate if a land use is protective of human health, safety and welfare and the environment given the environmental conditions at the property. For further information please refer to the MDEQ, Remediation and Redevelopment Division Operational Memorandum #1: Part 201 Generic Cleanup Criteria/Part 213 Risk Based Cleanup Levels, dated December 10, 2004. It is important to note that for all commercial and industrial land use categories there is an assumption for vapor intrusion criteria development that there is no below-grade component of any structure.***

#### **Industrial land use category**

***The primary activity at the property is and will continue to be industrial in nature and access is and will continue to be reliably restricted consistent with its use (e.g., by fences, security personnel or both).***

#### **Commercial land use category**

***The primary activity at the property is and will continue to be commercial in nature (e.g., retail, warehouse, office/business space). This land use category includes property that is currently zoned or anticipated to be zoned as commercial. This may include different zoning designations, depending on the community, such as "community commercial," "regional commercial," "retail," or "office business." Abandoned or inactive commercial properties can be included in this category provided the property land use is consistent with the definition of a commercial land use and included in one of the subcategory definitions described below.***

***Allowable land uses within the commercial category are extremely varied and broad, encompassing everything from day care centers and schools to gas stations and warehouse operations. The physical setting of commercial properties and the activities which workers***



***and the general public engage in are also extremely variable. Given the breadth of the commercial land use category, it is impossible to assign a single set of "typical" or generic exposure assumptions to characterize the activities of all potentially exposed populations. Consequently, the universe of commercial land uses has been divided into four subcategories based on factors that are critical to the assessment of potential risk. These factors include the potentially exposed populations (workers or general public) and the nature, duration, and frequency of the exposures likely to occur when people occupy, work at, visit, or patronize the facility. If the property is located in or near residential areas and, therefore, may be used by other populations for purposes other than the intended commercial use (e.g., recreational), additional measures (access control or placement of exposure barriers, etc.) may be required to prevent persons involved in the unintended uses from exceeding the exposure assumptions under the applicable subcategory described below.***

#### Commercial Subcategory II

This commercial land use subcategory is characterized by the following features. Access to the public is reliably restricted, consistent with its use, by fences, security, or both. Affected surficial soils are located in unpaved or landscaped areas that are frequently contacted by worker populations such as groundskeepers, maintenance workers, or other employees whose primary duties are performed outdoors. The degree of exposure for such employees under subcategory II property is assumed to be equivalent to the exposures used to model outdoor activities in the development of the generic industrial criteria. If groundwater is relied on for drinking water, it is assumed that worker populations receive half of their total daily drinking water exposure from the facility. No below grade structure (e.g., basement) is allowed when the corrective action is based upon this category of criteria.\*

This subcategory could include, but is not limited to, the following uses:

- large-scale commercial warehouse operations
- wholesale lumber yards
- building supply warehouses

***\*This sentence may be deleted only if a determination has been made that unacceptable indoor air inhalation risks would not result if a below grade structure were to be constructed (e.g., if site conditions meet generic assumptions and concentrations meet residential vapor intrusion criteria).***

#### Commercial Subcategory III (low soil intensive)

A subcategory III commercial property is characterized by the following features. Access to the public is unrestricted; however, the general public's occupancy of the property is expected to be intermittent and significantly less in frequency and duration relative to the population working at the facility. Although some of the activities for both worker populations and the general public at a subcategory III commercial property are conducted indoors, a significant component of their activity will likely be outdoors. The worker/receptor population at these commercial facilities is expected to engage in low soil intensive activities. Routine outdoor tasks performed by these workers are unlikely to result in significant physical interaction with the soil. Affected surficial soils are located in unpaved areas that may be contacted, primarily by the worker populations (as may be the cases at gas stations, auto dealerships, or building supply warehouses with unpaved areas). If on-site groundwater is relied on for drinking water, it is assumed that worker populations receive half of their total daily drinking water exposure from the facility. No below grade structure (e.g., basement) is allowed when the corrective action is based upon this category of criteria.\*

This subcategory could include, but is not limited to, the following uses:

- Retail gas stations

- Auto service stations
- Auto dealerships
- Retail warehouses selling the majority of their merchandise indoors but including some limited storage or stockpiling of materials in an outdoor yard (building supply, retail flower and garden shops not involving on-site plant horticulture and excluding open air nurseries, tree farms, and sod farms which would fall into an agricultural land use).
- Repair and service establishments including but not limited to, lawn mower, boat, snowmobile, or small appliance repair shops that have small outdoor yards.
- Small warehouse operations

***\*This sentence may be deleted only if a determination has been made that unacceptable indoor air inhalation risks would not result if a below grade structure were to be constructed (e.g., if site conditions meet generic assumptions and concentrations meet residential vapor intrusion criteria).***

#### Commercial Subcategory IV (high soil intensive)

A subcategory IV commercial property is characterized by the following features. Access to the public is unrestricted, however, the general public's occupancy of the facility is intermittent in frequency and of short duration relative to the worker populations at the facility (i.e., the frequency and duration of general public occupancy at the property is typified by the time necessary to transact business at a retail establishment or to receive personal services). However, at least a portion of the worker population at this type of commercial property conducts most of their work activities outdoors and is expected to engage in high soil intensive activities that will result in significant physical interaction with the soil. Such persons include workers from off-site who work at multiple properties such as commercial landscapers. If groundwater is relied upon for drinking water, worker populations would receive one-half of their total daily drinking water exposure at the facility. No below grade structure (e.g., basement) is allowed when the corrective action is based upon this category of criteria. \*

This subcategory could include, but is not limited to, the following uses where landscaping exists or has the potential to exist:

- Professional offices (lawyers, architects, engineers, real estate, insurance, etc.)
- Medical/dental offices and clinics (not including hospitals)
- Banks, credit unions, savings and loan institutions, etc.
- Publicly owned office buildings
- Any retail business whose principal activity is the sale of food or merchandise within an enclosed building
- Personal service establishments which perform services indoors (health clubs, barber/beauty salons, mortuaries, photographic studios, etc.).

***\*This sentence may be deleted only if a determination has been made that unacceptable indoor air inhalation risks would not result if a below grade structure were to be constructed (e.g., if site conditions meet generic assumptions and concentrations meet residential vapor intrusion criteria).***

**EXHIBIT 4 CONSENT OF EASEMENT HOLDERS**

*Insert additional pages if multiple easement holders exist for the Property.*

- A. *Insert name of Easement Holder.***
- B. *Insert Notary Public information as:***
  - Name of state
  - County
- C. *Complete the appropriate form of acknowledgment set forth in Section 29 of the Michigan Notary Public Act, 2003 PA 238, as amended, MCL 55.289,.***
- D. *Print, type or stamp name of notary public.***

**SAMPLE NOTICE OF CORRECTIVE ACTION  
FINAL ASSESSMENT REPORT**

MDEQ Reference No. NCA-RRD-213-\_\_\_\_(A)\_\_\_\_

This Notice of Corrective Action (Notice) was recorded with the \_\_\_\_ (B) \_\_\_\_ County Register of Deeds to protect public health, safety, and welfare, and the environment by prohibiting uses of the property located in \_\_\_\_ (C) \_\_\_\_ and legally described in the attached Exhibit 1 (Property) that are inconsistent with the environmental condition of the Property.

The Property is associated with \_\_\_\_ (D) \_\_\_\_ for which a Final Assessment Report (FAR) was completed under Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* Corrective actions that were implemented to address environmental contamination are fully described in the FAR dated \_\_\_\_ (E) \_\_\_\_\_. A copy of the FAR is available from the Michigan Department of Environmental Quality (MDEQ) Remediation and Redevelopment Division District Office.

The FAR required the recording of this Notice with the \_\_\_\_ (B) \_\_\_\_ County Register of Deeds to assure that the use of the Property is consistent with the exposure assumptions used to develop the \_\_\_\_ (F) \_\_\_\_ cleanup criteria employed by the FAR pursuant to Section 21304a(2) of the NREPA and the RBCA process. This Notice is based upon information available at the time the FAR was implemented. Failure of the corrective action to achieve and maintain the cleanup criteria and requirements specified in the FAR; future changes in the environmental condition of the Property or changes in the cleanup criteria developed under Section 21304a(2) of the NREPA; the discovery of environmental conditions at the Property that were not accounted for in the FAR; or use of the Property in a manner inconsistent with the restrictions described below may result in this Notice not being protective of public health, safety, and welfare, and the environment. The restrictions contained in this Notice are based upon information available at the time the FAR was implemented by \_\_\_\_ (G) \_\_\_\_\_.

\_\_\_\_ (H) \_\_\_\_\_

\_\_\_\_ (I) \_\_\_\_\_

Definitions

For the purposes of this Notice, the following definitions shall apply:

"MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf.

"Owner" means at any given time the then-current title holder of all or any portion of the Property.

"RBCA" means the American Society for Testing and Materials (ASTM) document entitled, "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites," Designation E 1739-95.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 213 of the NREPA; Part 201, Environmental Remediation, of the NREPA; or the Part 201 Administrative Rules (Part 201 Rules), 1990 AACRS R 299.5101 *et seq.*, shall have the same meaning in this document as in Parts 3, 213, and 201, and the Part 201 Rules, as of the date this Notice is filed.

#### Summary of Corrective Actions

\_\_\_\_(J)\_\_\_\_

#### **THEREFORE,**

##### 1. Declaration of Land Use Restrictions

a. Prohibited Land Uses. In accordance with the FAR, \_\_\_\_ (G) \_\_\_\_, \_\_\_\_ (K) \_\_\_\_, covenants that the Property is subject to the following restriction:

(1) The Owner shall prohibit all uses of \_\_\_\_ (L) \_\_\_\_ that are not compatible with the \_\_\_\_ (F) \_\_\_\_ uses allowed under Section 21304a(2) of the NREPA, and generally described in the "Description of Allowable Uses," attached as Exhibit 3. \_\_\_\_ (M) \_\_\_\_\_. Cleanup criteria for land use-based corrective actions are located in the Government Documents Section of the Library of Michigan.

b. Owner Acknowledgements. The Owner also acknowledges that:

(1) If there is any proposed change in the land use at any time in the future, that change may necessitate further evaluation of potential risks to the public health, safety, and welfare, and to the environment and that the MDEQ must be contacted regarding any proposed change in the land use.

\_\_\_\_(N)\_\_\_\_

2. MDEQ Access. The Owner grants to the MDEQ and its designated representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the FAR, including the right to take samples, inspect the operation and maintenance of the corrective action measures and inspect any records relating to them, and to perform any actions necessary to maintain compliance with Part 213 and the FAR.

3. Conveyance of Property Interest. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the terms of the FAR and this Notice. A copy of this Notice shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest in accordance with Section 20116(3) and Section 21310a(2)(c) of the NREPA.

4. Audits Pursuant to Section 21315 of the NREPA. This Notice is subject to audits in accordance with the provisions of Section 21315 of the NREPA, and such an audit may result in the finding by the MDEQ that this Notice is not protective of the public health, safety, and welfare, and the environment.

5. Term of Notice. This Notice shall run with the Property and is binding on the Owner; future owners; and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. This Notice may only be modified or rescinded with the written approval of the MDEQ.

6. Enforcement of Notice. The State of Michigan, through the MDEQ, and (G) may individually enforce the restrictions set forth in this Notice by legal action in a court of competent jurisdiction.

7. Disclaimer. This Property contains regulated substances in excess of the concentrations developed as the unrestricted residential criteria under Section 21304a(2) of the NREPA. The MDEQ recommends that prospective purchasers or users of this Property undertake appropriate due diligence prior to acquiring or using this Property and undertake appropriate actions to comply with the requirements of Section 20107a of the NREPA.

8. Severability. If any provision of this Notice is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provision of this Notice, which shall continue unimpaired and in full force and effect.

9. Authority to Execute Notice. The undersigned person executing this Notice is the Owner, or has the express written permission of the Owner, and certifies that he or she is duly authorized to execute and record this Notice.

IN WITNESS WHEREOF, \_\_\_\_\_(G)\_\_\_\_\_ has caused this Notice of Corrective Action, MDEQ Reference No. NCA-RRD-213-\_\_\_\_\_(A)\_\_\_\_\_, to be executed on this \_\_\_\_\_(O)\_\_\_\_\_.

\_\_\_\_\_(G)\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_(P)\_\_\_\_\_  
COUNTY OF \_\_\_\_\_(P)\_\_\_\_\_

\_\_\_\_\_(Q)\_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_(R)\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

Drafted by: \_\_\_\_\_

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

## CONSENT OF OWNER

I, \_\_\_\_\_(A)\_\_\_\_\_, the current and legal Owner of the Property, do hereby consent to the recording of this Notice of Corrective Action and authorize \_\_\_\_\_(B)\_\_\_\_\_ to file this Notice of Corrective Action with the \_\_\_\_\_(C)\_\_\_\_\_ County Register of Deeds for recording:

\_\_\_\_\_(A)\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_(D)\_\_\_\_\_  
COUNTY OF \_\_\_\_\_(D)\_\_\_\_\_

\_\_\_\_\_(E)\_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_(F)\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_



**EXHIBIT 1**

**LEGAL DESCRIPTION OF PROPERTY**

SAMPLE

**EXHIBIT 2**

**SURVEY OF THE PROPERTY**

**OR**

**SURVEY OF THE PROPERTY AND LIMITS OF LAND USE RESTRICTIONS**

**SAMPLE**

## **EXHIBIT 3**

### **DESCRIPTION OF ALLOWABLE USES**

**SAMPLE**

**SAMPLE NOTICE OF CORRECTIVE ACTION  
CLOSURE REPORT**

MDEQ Reference No. NCA-RRD-213-\_\_\_\_(A)\_\_\_\_

This Notice of Corrective Action (Notice) was recorded with the \_\_\_\_ (B) \_\_\_\_ County Register of Deeds to protect public health, safety, and welfare, and the environment by prohibiting uses of the property located in \_\_\_\_ (C) \_\_\_\_ and legally described in the attached Exhibit 1 (Property) that are inconsistent with the environmental condition of the Property.

The Property is associated with \_\_\_\_ (D) \_\_\_\_ for which a Closure Report (CR) was completed under Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* Corrective actions that were implemented to address environmental contamination are fully described in the CR dated \_\_\_\_ (E) \_\_\_\_\_. A copy of the CR is available from the Michigan Department of Environmental Quality (MDEQ) Remediation and Redevelopment Division District Office.

The CR required the recording of this Notice with the \_\_\_\_ (B) \_\_\_\_ County Register of Deeds to assure that the use of the Property is consistent with the exposure assumptions used to develop the \_\_\_\_ (F) \_\_\_\_ cleanup criteria employed by the CR pursuant to Section 21304a(2) of the NREPA and the RBCA process. This Notice is based upon information available at the time the CR was implemented. Failure of the corrective action to achieve and maintain the cleanup criteria and requirements specified in the CR; future changes in the environmental condition of the Property or changes in the cleanup criteria developed under Section 21304a(2) of the NREPA; the discovery of environmental conditions at the Property that were not accounted for in the CR; or use of the Property in a manner inconsistent with the restrictions described below may result in this Notice not being protective of public health, safety, and welfare, and the environment. The restrictions contained in this Notice are based upon information available at the time the CR was implemented by \_\_\_\_ (G) \_\_\_\_\_. \_\_\_\_ (H) \_\_\_\_\_

\_\_\_\_ (I) \_\_\_\_\_

Definitions

For the purposes of this Notice, the following definitions shall apply:

"MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf.

"Owner" means at any given time the then-current title holder of all or any portion of the Property.

"RBCA" means the American Society for Testing and Materials (ASTM) document entitled, "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites," Designation E 1739-95.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 213 of the NREPA; Part 201, Environmental Remediation, of the NREPA; or the Part 201 Administrative Rules (Part 201 Rules), 1990 AACRS R 299.5101 *et seq.*, shall have the same meaning in this document as in Parts 3, 213, and 201, and the Part 201 Rules, as of the date this Notice is filed.

#### Summary of Corrective Actions

\_\_\_\_(J)\_\_\_\_

#### **THEREFORE,**

##### 1. Declaration of Land Use Restrictions

a. Prohibited Land Uses. In accordance with the CR, \_\_\_\_ (G) \_\_\_\_, \_\_\_\_ (K) \_\_\_\_, covenants that the Property is subject to the following restriction:

(1) The Owner shall prohibit all uses of \_\_\_\_ (L) \_\_\_\_ that are not compatible with the \_\_\_\_ (F) \_\_\_\_ uses allowed under Section 21304a(2) of the NREPA, and generally described in the "Description of Allowable Uses," attached as Exhibit 3. \_\_\_\_ (M) \_\_\_\_\_. Cleanup criteria for land use-based corrective actions are located in the Government Documents Section of the Library of Michigan.

b. Owner Acknowledgements. The Owner also acknowledges that:

(1) If there is any proposed change in the land use at any time in the future, that change may necessitate further evaluation of potential risks to the public health, safety, and welfare, and to the environment and that the MDEQ must be contacted regarding any proposed change in the land use.

\_\_\_\_(N)\_\_\_\_

3. MDEQ Access. The Owner grants to the MDEQ and its designated representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the CR, including the right to take samples, inspect the operation and maintenance of the corrective action measures and inspect any records relating to them, and to perform any actions necessary to maintain compliance with Part 213 and the CR.

3. Conveyance of Property Interest. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the terms of the CR and this Notice. A copy of this Notice shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest in accordance with Section 20116(3) and Section 21310a(2)(c) of the NREPA.
4. Audits Pursuant to Section 21315 of the NREPA. This Notice is subject to audits in accordance with the provisions of Section 21315 of the NREPA, and such an audit may result in the finding by the MDEQ that this Notice is not protective of the public health, safety, and welfare, and the environment.
5. Term of Notice. This Notice shall run with the Property and is binding on the Owner; future owners; and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. This Notice may only be modified or rescinded with the written approval of the MDEQ.
6. Enforcement of Notice. The State of Michigan, through the MDEQ, and       (G)       may individually enforce the restrictions set forth in this Notice by legal action in a court of competent jurisdiction.
7. Disclaimer. This Property contains regulated substances in excess of the concentrations developed as the unrestricted residential criteria under Section 21304a(2) of the NREPA. The MDEQ recommends that prospective purchasers or users of this Property undertake appropriate due diligence prior to acquiring or using this Property and undertake appropriate actions to comply with the requirements of Section 20107a of the NREPA.
8. Severability. If any provision of this Notice is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provision of this Notice, which shall continue unimpaired and in full force and effect.
9. Authority to Execute Notice. The undersigned person executing this Notice is the Owner, or has the express written permission of the Owner, and certifies that he or she is duly authorized to execute and record this Notice.

IN WITNESS WHEREOF, \_\_\_\_\_(G)\_\_\_\_\_ has caused this Notice of Corrective Action, MDEQ Reference No. NCA-RRD-213-\_\_\_\_\_(A)\_\_\_\_\_, to be executed on this \_\_\_\_\_(O)\_\_\_\_\_.

\_\_\_\_\_(G)\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_(P)\_\_\_\_\_  
COUNTY OF \_\_\_\_\_(P)\_\_\_\_\_

\_\_\_\_\_(Q)\_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_(R)\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

Drafted by: \_\_\_\_\_

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

## CONSENT OF OWNER

I, \_\_\_\_\_(A)\_\_\_\_\_, the current and legal Owner of the Property, do hereby consent to the recording of this Notice of Corrective Action and authorize \_\_\_\_\_(B)\_\_\_\_\_ to file this Notice of Corrective Action with the \_\_\_\_\_(C)\_\_\_\_\_ County Register of Deeds for recording:

\_\_\_\_\_(A)\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_(D)\_\_\_\_\_  
COUNTY OF \_\_\_\_\_(D)\_\_\_\_\_

\_\_\_\_\_(E)\_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_(F)\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_



**EXHIBIT 1**

**LEGAL DESCRIPTION OF PROPERTY**

**SAMPLE**

**EXHIBIT 2**

**SURVEY OF THE PROPERTY**

**OR**

**SURVEY OF THE PROPERTY AND LIMITS OF LAND USE RESTRICTIONS**

**SAMPLE**

**EXHIBIT 3**

**DESCRIPTION OF ALLOWABLE USES**

**SAMPLE**



DECLARATION OF RESTRICTIVE COVENANT  
INSTRUCTIONS FOR FORM EQP3854

This document provides instruction for Form EQP3854 which must be used in compliance with Section 21310a(2) and Section 21316 of NREPA<sup>1</sup>, when the corrective action activities at a site result in a final remedy that relies on an institutional control in the form of a restrictive covenant (RC). This form is not required if an alternate mechanism is approved by the Michigan Department of Environmental Quality (MDEQ) pursuant to Sections 21310a(3) and 21310a(4) of the NREPA.

The content of the RC is subject to approval by the MDEQ. If the RC is found to be deficient, it must be corrected and re-recorded with the Register of Deeds. In accordance with Section 21311a(2) of the NREPA, if the RC addresses contamination that has migrated or will migrate off site, MDEQ approval and permission of affected property owner(s), including easement holders, of the RC must be obtained prior to recording with the Register of Deeds. A copy of the RC and proof of recording must be submitted with the Closure Report (EQP3843) to the appropriate MDEQ District Office at the address listed in form EQP4410. Form EQP3854 must be completed in its entirety. The recording requirements for instruments filed with Michigan county Register of Deeds offices are contained in Section 1 of the Recording Requirements Act, 1937 PA 103, as amended (Act 103), MCL 565.201. Act 103 is available at, <http://legislature.mi.gov/doc.aspx?mcl-act-103-of-1937>.

The lettered instructions below explain what information should be *inserted* into the corresponding blank shown on the Sample Declaration of Restrictive Covenant. Drafting notes and insertion directions appear as bold italicized print.

- A. MDEQ Reference No. RC-RRD-213-[YR]-[number]  
*In order to ensure the protectiveness, enforcement, and tracking of institutional controls, all institutional controls require that an MDEQ Reference Number be assigned and predominantly displayed on the first page of the RC. The MDEQ Reference Number must be obtained from the MDEQ, Remediation and Redevelopment Division (RRD) [deq-rrd@michigan.gov](mailto:deq-rrd@michigan.gov) or 517-373-7818.*
- B. *Enter name of county where the site is located.*
- C. *Enter address location of property, including city or township and county.*
- D. *Enter the Part 213 site name and facility ID number.*
- E. *Enter date of the Final Assessment Report (FAR) or Closure Report (CR).*
- F. *Add the following to the sentence if there is a long-term physical component of the corrective action (e.g., an asphalt cap, permanent marker, or monitoring wells):*  
and (4) to prevent damage or disturbance of any element of the corrective action constructed on the Property.  
*If there is no long term physical component of the correction action remove the semi-colon and end the sentence.*

<sup>1</sup> Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA)

G. ***Enter the name of owner or operator as defined by Section 21303 (a) or (b) of NREPA that is proposing FAR or CR and the filing of this RC.***

H. ***Insert the following sentence if the land or resource use restrictions apply only on-site:***

The adequacy of the corrective actions undertaken pursuant to the [FAR or CR] may not have been reviewed by the MDEQ.

I. ***Select the appropriate option based upon the proposed restricted area:***

***OPTION 1: To be used if the entire property is subject to the land and/or resource use restrictions provided in this RC. Note: A mortgage survey of the Property may be used for this purpose if one is already available. Insert the following:***

Exhibit 2 provides a survey of the Property that is subject to the land and/or resource use restrictions specified in this Restrictive Covenant.

***OPTION 2: To be used if not all of the Property is subject to the land and/or resource use restrictions provided in this RC. Note: In this case, a mortgage survey is not appropriate, and a survey and legal description for both the property and the specific area that will be subject to the restrictions is required. Insert the following:***

The "Survey of Property and Limits of Land and Resource Use Restrictions," attached as Exhibit 2, provides a survey of the Property that depicts the area subject to restriction and additional legal descriptions that distinguish those portions of the Property that are subject to the land and resource use restrictions specified in this Restrictive Covenant.

J. ***Insert a paragraph similar to the following example that briefly describes the nature of the regulated substances released, the affected media, and how the corrective action proposed including restricting land or resource uses will be effective to address unacceptable risks for all relevant pathways that require restrictions:***

***Example: Hazardous substances including benzene, toluene, ethyl benzene, xylenes, naphthalene and trimethylbenzenes were released from an underground storage tank resulting in contamination of the Property. Soil and groundwater contamination remains present at levels that do not allow unrestricted use of the Property. Public health will be protected by preventing the use of the groundwater for ingestion. An exposure barrier has been constructed (identified in Exhibit 2) to prevent direct contact with contaminated soils. An engineered vapor barrier has been constructed under Building B (identified in Exhibit 2) to prevent migration of contaminants in the vapor phase into the building at levels that would result in unacceptable exposures through inhalation.***

K. ***Enter as appropriate:***

as Owner of the Property

with the express written permission of the Owner of the Property

L. ***Enter as appropriate:***

Residential

Commercial Subcategory I

Commercial Subcategory II

Commercial Subcategory III

Commercial Subcategory IV

Industrial

***and***

category

categories

- M. The person preparing the RC must examine the zoning code or ordinance that applies to the property to determine what land uses are allowed under the zoning category(s). A closure other than unrestricted residential must match the zoning category. Preparation of the RC must include a review of the uses allowed by the local zoning. If the Property's current zoning allows for uses with greater exposure potential than the generic exposure assumptions used by the MDEQ in the development of the land use-based cleanup criteria relied upon in the FAR or CR, (e.g., in an area zoned commercial a residential use such as apartments above an office or store, or any uses that would house, educate, or provide care for children, the elderly or infirm) the following information must be inserted:**

The following uses allowed under [insert name of local zoning authority and zoning code designation] zoning ordinance are prohibited: [list prohibited uses]

**Example language:**

**The following uses allowed under Article X, Division 5, Chapter 61 (Zoning) of the 1984 Detroit City Code known as the "Detroit Zoning Ordinance" (Ordinance 11-05) M4 zoning code designation are prohibited: Business college or commercial trade school use, and school or studio or dance, gymnastics, music or art listed under Section 61-10-76 (Bi Right Retail, Service and Commercial Uses) Subsections 10 and 46, respectively, and all conditional residential uses listed under Section 61-10-80 (Conditional Residential Uses). Article X is provided in Exhibit 4.**

**If the contamination left in place would allow a restricted residential use, but that use does not match the current zoning (e.g., for a commercial or industrial zoned property where groundwater contamination exceeds only residential drinking water criteria and that exposure is being reliably restricted) the following may be inserted:**

Should the Property be subsequently zoned for residential uses, the Owner may, at the Owner's option utilize the Property for residential purposes provided the Owner continues to comply with the prohibited activities to eliminate unacceptable exposures to regulated substances and the Owner notifies and provides documentation of the change in zoning to the MDEQ.

- N. Enter as appropriate:**  
on the Property  
within the portions of the Property designated in Exhibit 2.
- O. List all prohibited activities that are necessary to reliably restrict exposures to regulated substances located on the Property or within the portions of the Property designated in Exhibit 2.**

**Example exposure restriction for use of groundwater:**

**The construction of wells or other devices used to extract groundwater for consumption, irrigation, or any other purpose, except as provided below:**

**(a) Wells and other devices constructed for the purpose of evaluating groundwater quality or to remediate subsurface contamination associated with a release of regulated substances into the environment are permitted, provided the construction of the wells or devices complies with all applicable local, state, and federal laws and regulations and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, or federal laws or regulations.**

*(b) Short-term dewatering for construction purposes is permitted provided the dewatering including management and disposal of the groundwater is conducted in accordance with all applicable local, state, and federal laws and regulations; and does not cause or result in a new release, exacerbation of existing contamination, or any other violation of local, state, and federal environmental laws and regulations.*

**Example vapor intrusion exposure restriction (No existing buildings):**

*Construction of new structures, unless such construction incorporates engineering controls designed to eliminate the potential for subsurface vapor phase hazardous substances to migrate into the new structure at concentrations greater than applicable criteria; or unless prior to construction of any structure an evaluation of the potential for regulated substances to volatilize into indoor air assures the protection of persons who may be present in the buildings and compliance with Section 20107a of the NREPA.*

- P. List all activities prohibited on the Property or within the portions of the Property designated in Exhibit 2 that are necessary to maintain the effectiveness and integrity of the FAR or CR.**

**Example for direct contact barrier:**

*The asphalt paving in the area identified in Exhibit 2 serves to prevent exposures to contaminated soils. As a result, any excavation or other intrusive activity, including removing, altering, or disturbing the asphalt cover, that could affect the integrity of the exposure barrier must be repaired or replaced with a cover providing at least an equivalent degree of protection as the original cover within fourteen (14) days of completion of the work that required the intrusion.*

**Example for infiltration barrier:**

*The asphalt paving in the area identified in Exhibit 2 serves as a barrier for infiltration of water through contaminated soil. As a result, any intrusive activity must include the use of engineering controls to prevent infiltration of water into the contaminated soil underlying such cover until the cover is repaired or replaced. Any excavation or other intrusive activity, including removing, altering, or disturbing the asphalt cover, that could affect the integrity of the exposure barrier must be repaired or replaced with a cover providing at least an equivalent degree of protection as the original cover within fourteen (14) days of completion of the work that required the intrusion.*

**Example for groundwater treatment (or monitoring) system:**

*Any activity that may compromise the effectiveness of the groundwater treatment system, as described in the FAR in the area shown in Exhibit 2.*

- Q. Insert if portions of the property subject to land use or resource use restrictions overlap any easement holder's property interests:**  
and all other holders of a legal interest whose interest is materially affected by this Restrictive Covenant as documented and attached as Exhibit [ ].
- R. Insert the date as:**  
{Day of the month}, day of, {month}, {year}.
- S. Insert Notary Public information as:**  
Name of state  
County

- T. *Insert the appropriate form of acknowledgment set forth in Section 29 of the Michigan Notary Public Act, 2003 PA 238, as amended, MCL 55.289, (available at <http://legislature.mi.gov/doc.aspx?mcl-55-261>).*

*Example acknowledgment form for a corporation:*

*Acknowledged before me in \_\_\_\_\_ County, Michigan, on \_\_\_\_\_, \_\_\_\_\_ (year) by Mary Doe, president of X company, a Michigan corporation, for the corporation.*

- U. *Print, type or stamp name of notary public.*

**CONSENT OF OWNER ATTACHMENT:**

*This form is only necessary if the current property owner and signee of the RC are not the same person. This document provides the express written permission of the current property owner for recording.*

- A. *Enter the name of current property owner.*
- B. *Enter the name of the person recording the document.*
- C. *Enter the name of the county where the property is located.*
- D. *Insert Notary Public information as:*  
Name of state  
County
- E. *Complete the appropriate form of acknowledgment set forth in Section 29 of the Michigan Notary Public Act, 2003 PA 238, as amended, MCL 55.289,.*
- F. *Print, type or stamp name of notary public.*

**EXHIBIT 1 LEGAL DESCRIPTION OF PROPERTY**

*This exhibit must provide the legal description of the property, including parcel identification numbers(s) of the Property.*

**EXHIBIT 2 SURVEY OF PROPERTY OR**

**SURVEY OF PROPERTY AND LIMITS OF LAND AND RESOURCE USE RESTRICTIONS**

*This exhibit must be titled as appropriate for the restricted area.*

*All surveys must: be conducted by a licensed surveyor; identify, clearly delineate, and graphically depict the spatial extent of all restricted areas in relation to the Property boundaries and the key features of the corrective action, including monitoring wells and permanent markers if required; and provide a legal description of the restricted areas of the Property.*

**EXHIBIT 3 DESCRIPTION OF ALLOWABLE USES**

*This exhibit must be consistent with the generic exposure assumptions utilized in the FAR or CR under Section 21304a(2) of the NREPA or the alternative exposure assumptions used to derive site-specific criteria if approved in the FAR or CR. The allowable uses must be consistent with the property zoning. If the allowable uses under the local zoning code do not align with the land use categories described below, consult with the MDEQ project manager for assistance.*

*Insert the text of one of the following sections, shown unbolded below, (i.e., Commercial Subcategory II, Commercial Subcategory III, Commercial Subcategory IV, Industrial Land Use Category, or Residential) verbatim in Exhibit 3. The details of the zoning code that is applicable to the property and the following general information regarding the categories must be carefully reviewed to select the appropriate category for the allowable uses.*



## **INDUSTRIAL AND COMMERCIAL LAND USE CATEGORIES**

*Activities and uses are extremely variable within the industrial and commercial land uses. The information and general descriptions of allowable land use categories provided below is intended to provide guidance as to the land use and exposure assumptions relied upon by the Michigan Department of Environmental Quality (MDEQ) in developing the cleanup criteria for the specific land use category pursuant to Section 20120a of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended. This information can be used to evaluate if a land use is protective of human health, safety and welfare and the environment given the environmental conditions at the property. For further information please refer to the MDEQ, Remediation and Redevelopment Division Operational Memorandum #1: Part 201 Generic Cleanup Criteria/Part 213 Risk Based Cleanup Levels, dated December 10, 2004. It is important to note that for all commercial and industrial land use categories there is an assumption for vapor intrusion criteria development that there is no below-grade component of any structure.*

### **Industrial land use category**

The primary activity at the property is and will continue to be industrial in nature and access is and will continue to be reliably restricted consistent with its use (e.g., by fences, security personnel or both).

### **Commercial land use category**

*The primary activity at the property is and will continue to be commercial in nature (e.g., retail, warehouse, office/business space). This land use category includes property that is currently zoned or anticipated to be zoned as commercial. This may include different zoning designations, depending on the community, such as "community commercial," "regional commercial," "retail," or "office business." Abandoned or inactive commercial properties can be included in this category provided the property land use is consistent with the definition of a commercial land use and included in one of the subcategory definitions described below.*

*Allowable land uses within the commercial category are extremely varied and broad, encompassing everything from day care centers and schools to gas stations and warehouse operations. The physical setting of commercial properties and the activities which workers and the general public engage in are also extremely variable. Given the breadth of the commercial land use category, it is impossible to assign a single set of "typical" or generic exposure assumptions to characterize the activities of all potentially exposed populations. Consequently, the universe of commercial land uses has been divided into four subcategories based on factors that are critical to the assessment of potential risk. These factors include the potentially exposed populations (workers or general public) and the nature, duration, and frequency of the exposures likely to occur when people occupy, work at, visit, or patronize the facility. If the property is located in or near residential areas and, therefore, may be used by other populations for purposes other than the intended commercial use (e.g., recreational), additional measures (access control or placement of exposure barriers, etc.) may be required to prevent persons involved in the unintended uses from exceeding the exposure assumptions under the applicable subcategory described below.*

### **Commercial Subcategory II**

This commercial land use subcategory is characterized by the following features. Access to the public is reliably restricted, consistent with its use, by fences, security, or both. Affected surficial soils are located in unpaved or landscaped areas that are frequently contacted by worker populations such as groundskeepers, maintenance workers, or other employees whose primary

duties are performed outdoors. The degree of exposure for such employees under subcategory II property is assumed to be equivalent to the exposures used to model outdoor activities in the development of the generic industrial criteria. If groundwater is relied on for drinking water, it is assumed that worker populations receive half of their total daily drinking water exposure from the facility. No below grade structure (e.g., basement) is allowed when the corrective action is based upon this category of criteria.\*

This subcategory could include, but is not limited to, the following uses:

- large-scale commercial warehouse operations
- wholesale lumber yards
- building supply warehouses

***\*This sentence may be deleted only if a determination has been made that unacceptable indoor air inhalation risks would not result if a below grade structure were to be constructed (e.g., if site conditions meet generic assumptions and concentrations meet residential vapor intrusion criteria).***

#### Commercial Subcategory III (low soil intensive)

A subcategory III commercial property is characterized by the following features. Access to the public is unrestricted; however, the general public's occupancy of the property is expected to be intermittent and significantly less in frequency and duration relative to the population working at the facility. Although some of the activities for both worker populations and the general public at a subcategory III commercial property are conducted indoors, a significant component of their activity will likely be outdoors. The worker/receptor population at these commercial facilities is expected to engage in low soil intensive activities. Routine outdoor tasks performed by these workers are unlikely to result in significant physical interaction with the soil. Affected surficial soils are located in unpaved areas that may be contacted, primarily by the worker populations (as may be the cases at gas stations, auto dealerships, or building supply warehouses with unpaved areas). If on-site groundwater is relied on for drinking water, it is assumed that worker populations receive half of their total daily drinking water exposure from the facility. No below grade structure (e.g., basement) is allowed when the corrective action is based upon this category of criteria. \*

This subcategory could include, but is not limited to, the following uses:

- Retail gas stations
- Auto service stations
- Auto dealerships
- Retail warehouses selling the majority of their merchandise indoors but including some limited storage or stockpiling of materials in an outdoor yard (building supply, retail flower and garden shops not involving on-site plant horticulture and excluding open air nurseries, tree farms, and sod farms which would fall into an agricultural land use).
- Repair and service establishments including but not limited to, lawn mower, boat, snowmobile, or small appliance repair shops that have small outdoor yards.
- Small warehouse operations

***\*This sentence may be deleted only if a determination has been made that unacceptable indoor air inhalation risks would not result if a below grade structure were to be constructed (e.g., if site conditions meet generic assumptions and concentrations meet residential vapor intrusion criteria).***

#### Commercial Subcategory IV (high soil intensive)

A subcategory IV commercial property is characterized by the following features. Access to the public is unrestricted, however, the general public's occupancy of the facility is intermittent in frequency and of short duration relative to the worker populations at the facility (i.e., the frequency

and duration of general public occupancy at the property is typified by the time necessary to transact business at a retail establishment or to receive personal services). However, at least a portion of the worker population at this type of commercial property conducts most of their work activities outdoors and is expected to engage in high soil intensive activities that will result in significant physical interaction with the soil. Such persons include workers from off-site who work at multiple properties such as commercial landscapers. If groundwater is relied upon for drinking water, worker populations would receive one-half of their total daily drinking water exposure at the facility. No below grade structure (e.g., basement) is allowed when the corrective action is based upon this category of criteria. \*

This subcategory could include, but is not limited to, the following uses where landscaping exists or has the potential to exist:

- Professional offices (lawyers, architects, engineers, real estate, insurance, etc.)
- Medical/dental offices and clinics (not including hospitals)
- Banks, credit unions, savings and loan institutions, etc.
- Publicly owned office buildings
- Any retail business whose principal activity is the sale of food or merchandise within an enclosed building
- Personal service establishments which perform services indoors (health clubs, barber/beauty salons, mortuaries, photographic studios, etc.).

***\*This sentence may be deleted only if a determination has been made that unacceptable indoor air inhalation risks would not result if a below grade structure were to be constructed (e.g., if site conditions meet generic assumptions and concentrations meet residential vapor intrusion criteria).***

#### Residential Land Use Category

The primary activity of the property is residential and includes single family dwellings.

#### Commercial Subcategory 1

A subcategory I commercial property is characterized by any use which is intended to house, educate, or provide care for children, the elderly, the infirm or other sensitive subpopulations. The occupancy of the property by these populations are approximately the same duration and/or frequency of the exposures used for residential residential occupancy. The setting may include areas containing surficial soils that may be frequented by potentially exposed populations (e.g., play areas) and if relied on for drinking water, exposure to the groundwater would be significant. In addition, this subcategory of commercial land use is often located in or near residential areas, and therefore, may be used by other populations for proposes other than the intended commercial use (e.g., recreational).

This subcategory could include, but is not limited to the following uses:

- Day care centers
- Any form of educational facility
- Hospitals, elder care facilities, and nursing homes

#### **EXHIBIT 4 CONSENT OF EASEMENT HOLDERS**

***Insert additional pages if multiple easement holders exist for the Property.***

**A. *Insert name of Easement Holder.***

**B. *Insert Notary Public information as:***

Name of state  
County

- C. *Complete the appropriate form of acknowledgment set forth in Section 29 of the Michigan Notary Public Act, 2003 PA 238, as amended, MCL 55.289,.*
- D. *Print, type or stamp name of notary public.*

**SAMPLE DECLARATION OF RESTRICTIVE COVENANT  
FINAL ASSESSMENT REPORT**

MDEQ Reference No. RC-RRD-213-\_\_\_\_(A)\_\_\_\_

This Declaration of Restrictive Covenant (Restrictive Covenant) was recorded with the \_\_\_\_ (B) \_\_\_\_ County Register of Deeds to protect public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to environmental contamination present at the property located in \_\_\_\_ (C) \_\_\_\_ and legally described in the attached Exhibit 1 (Property).

The Property is associated with \_\_\_\_ (D) \_\_\_\_ for which a Final Assessment Report (FAR) was completed under Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* Corrective actions that were implemented to address environmental contamination are fully described in the FAR dated \_\_\_\_ (E) \_\_\_\_ and submitted to the Michigan Department of Environmental Quality (MDEQ) by the owner or operator as defined by Section 21303(a) or (b) of the NREPA. A copy of the FAR is available from the MDEQ Remediation and Redevelopment Division (RRD) District Office.

Part 213 of NREPA requires the recording of this Restrictive Covenant with the \_\_\_\_ (B) \_\_\_\_ County Register of Deeds based upon the corrective action activities for the site to: (1) restrict unacceptable exposures to regulated substances located on the Property; (2) assure that the use of the Property is consistent with the exposure assumptions used to develop cleanup criteria under Section 21304a(2) of the NREPA, and (3) assure the exposure control measures relied upon in the FAR are effective; \_\_\_\_ (F) \_\_\_\_ . The restrictions contained in this Restrictive Covenant are based upon information available at the time the FAR was implemented by \_\_\_\_ (G) \_\_\_\_ . Failure of the corrective action to achieve and maintain the cleanup criteria, exposure controls, and requirements specified in the FAR; future changes in the environmental condition of the Property or changes in the cleanup criteria developed under Section 21304a(2) of the NREPA; the discovery of environmental conditions at the Property that were not accounted for in the FAR; or use of the Property in a manner inconsistent with the restrictions described below may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment. \_\_\_\_ (H) \_\_\_\_

\_\_\_\_ (I) \_\_\_\_

Definitions

For the purposes of this Restrictive Covenant, the following definitions shall apply:

"MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf.

"Owner" means at any given time the then-current title holder of all or any portion of the Property.

"RBCA" means the American Society for Testing and Materials (ASTM) document entitled, "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites," Designation E 1739-95.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 213 of the NREPA; Part 201, Environmental Remediation, of the NREPA; or the Part 201 Administrative Rules (Part 201 Rules), 1990 AACRS R 299.5101 *et seq.*, shall have the same meaning in this document as in Parts 3, 213, and 201, and the Part 201 Rules, as of the date this Restrictive Covenant is filed.

#### Summary of Corrective Actions

\_\_\_\_(J)\_\_\_\_

THEREFORE,

#### 1. Declaration of Land and Resource Use Restrictions

In accordance with the FAR , \_\_\_\_ (G) \_\_\_\_, \_\_\_\_ (K) \_\_\_\_, covenants that the Property is subject to the following restrictions:

a. Prohibited Land Uses. The Owner shall prohibit all uses of the property that are not compatible with the \_\_\_\_ (L) \_\_\_\_ land use \_\_\_\_ (L) \_\_\_\_ relied on by the FAR and allowed under Section 21304a(2) of the NREPA, and generally described in the "Description of Allowable Uses," attached as Exhibit 3. \_\_\_\_ (M) \_\_\_\_ Cleanup criteria for land use-based corrective actions are located in the Government Documents Section of the Library of Michigan.

b. Prohibited Activities to Eliminate Unacceptable Exposures to Regulated Substances. The Owner shall prohibit activities \_\_\_\_ (N) \_\_\_\_ that may result in exposures above levels established in the FAR . These prohibited activities include:

\_\_\_\_ (O) \_\_\_\_

c. Prohibited Activities to Ensure Effectiveness and Integrity of the Corrective Action. The Owner shall prohibit activities on the Property that may interfere with any element of the FAR, including the performance of operation and maintenance activities, monitoring, or other measures necessary to ensure the effectiveness and integrity of the FAR.

\_\_\_\_ (P) \_\_\_\_

d. Contaminated Soil Management. The Owner shall manage all soils, media, and/or debris located on the Property in accordance with the applicable requirements of Sections 21304b and 20120c of the NREPA; Part 111, Hazardous Waste Management, of the

NREPA; Subtitle C of the Resource Conservation and Recovery Act, 42 USC Section 6901 *et seq.*; the administrative rules promulgated thereunder; and all other relevant state and federal laws.

2. MDEQ Access. The Owner grants to the MDEQ and its designated representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the FAR, including the right to take samples, inspect the operation and maintenance of the corrective action measures and inspect any records relating to them, and to perform any actions necessary to maintain compliance with Part 213 and the FAR.

3. Conveyance of Property Interest. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the terms of the FAR and this Restrictive Covenant. A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest in accordance with Section 20116(3) and Section 21310a(2)(c) of the NREPA.

4. Audits Pursuant to Section 21315 of the NREPA. This Restrictive Covenant is subject to audits in accordance with the provisions of Section 21315 of the NREPA, and such an audit may result in the finding by the MDEQ that this Restrictive Covenant is not protective of the public health, safety, and welfare, and the environment.

5. Term of Restrictive Covenant. This Restrictive Covenant shall run with the Property and is binding on the Owner; future owners; and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. This Restrictive Covenant shall continue in effect until the MDEQ or its successor determines that regulated substances no longer present an unacceptable risk to the public health, safety, or welfare, or the environment, and may only be modified or rescinded with the written approval of the MDEQ.

6. Enforcement of Restrictive Covenant. The State of Michigan, through the MDEQ, and \_\_\_\_\_(G)\_\_\_\_\_ may individually enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

7. Disclaimer. This Property contains regulated substances in excess of the concentrations developed as the unrestricted residential criteria under Section 21304a(2) of the NREPA. The MDEQ recommends that prospective purchasers or users of this Property undertake appropriate due diligence prior to acquiring or using this Property and undertake appropriate actions to comply with the requirements of Section 20107a of the NREPA.

8. Severability. If any provision of this Restrictive Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provision of this Restrictive Covenant, which shall continue unimpaired and in full force and effect.

9. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner \_\_\_\_\_(Q)\_\_\_\_\_, and certifies that he or she is duly authorized to execute and record this Restrictive Covenant.

IN WITNESS WHEREOF, \_\_\_\_\_(G)\_\_\_\_\_ has caused this Restrictive Covenant, \_\_\_\_\_(A)\_\_\_\_\_, to be executed on this \_\_\_\_\_(R)\_\_\_\_\_.

\_\_\_\_\_(G)\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_(S)\_\_\_\_\_  
COUNTY OF \_\_\_\_\_(S)\_\_\_\_\_

\_\_\_\_\_(T)\_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_(U)\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

Drafted by: \_\_\_\_\_

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_



### CONSENT OF OWNER

I, \_\_\_\_\_(A)\_\_\_\_\_, the current and legal Owner of the Property, do hereby consent to the recording of this Restrictive Covenant and authorize \_\_\_\_\_(B)\_\_\_\_\_ to file this Restrictive Covenant with the \_\_\_\_\_(C)\_\_\_\_\_ County Register of Deeds for recording:

\_\_\_\_\_(A)\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_(D)\_\_\_\_\_  
COUNTY OF \_\_\_\_\_(D)\_\_\_\_\_

\_\_\_\_\_(E)\_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_(F)\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

**EXHIBIT 1**

**LEGAL DESCRIPTION OF PROPERTY**

SAMPLE

**EXHIBIT 2**

**SURVEY OF THE PROPERTY**

**OR**

**SURVEY OF THE PROPERTY AND LIMITS OF LAND OR RESOURCE USE RESTRICTIONS**

SAMPLE

## EXHIBIT 3

### DESCRIPTION OF ALLOWABLE USES

SAMPLE

EXHIBIT 4

CONSENT OF EASEMENT HOLDERS

As evidenced below by my signature, I agree and consent to the recording of the land use and resource use restrictions specified in this Restrictive Covenant.

\_\_\_\_\_(A)\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_(B)\_\_\_\_\_  
COUNTY OF \_\_\_\_\_(B)\_\_\_\_\_

\_\_\_\_\_(C)\_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_(D)\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

## SAMPLE DECLARATION OF RESTRICTIVE COVENANT CLOSURE REPORT

MDEQ Reference No. RC-RRD-213-\_\_\_\_(A)\_\_\_\_\_

This Declaration of Restrictive Covenant (Restrictive Covenant) was recorded with the \_\_\_\_ (B) \_\_\_\_ County Register of Deeds to protect public health, safety, and welfare, and the environment by prohibiting or restricting activities that could result in unacceptable exposure to environmental contamination present at the property located in \_\_\_\_ (C) \_\_\_\_ and legally described in the attached Exhibit 1 (Property).

The Property is associated with \_\_\_\_ (D) \_\_\_\_ for which a Closure Report (CR) was completed under Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* Corrective actions that were implemented to address environmental contamination are fully described in the CR dated \_\_\_\_ (E) \_\_\_\_\_. A copy of the CR is available from the Michigan Department of Environmental Quality (MDEQ) Remediation and Redevelopment Division District Office.

Part 213 of NREPA requires the recording of this Restrictive Covenant with the \_\_\_\_ (B) \_\_\_\_ County Register of Deeds based upon the corrective action activities for the site to: (1) restrict unacceptable exposures to regulated substances located on the Property; (2) assure that the use of the Property is consistent with the exposure assumptions used to develop cleanup criteria under Section 21304a(2) of the NREPA, and (3) assure the exposure control measures relied upon in the CR are effective; \_\_\_\_ (F) \_\_\_\_\_. The restrictions contained in this Restrictive Covenant are based upon information available at the time the CR was implemented by \_\_\_\_ (G) \_\_\_\_\_. Failure of the corrective action to achieve and maintain the cleanup criteria, exposure controls, and requirements specified in the CR; future changes in the environmental condition of the Property or changes in the cleanup criteria developed under Section 21304a(2) of the NREPA; the discovery of environmental conditions at the Property that were not accounted for in the CR; or use of the Property in a manner inconsistent with the restrictions described below may result in this Restrictive Covenant not being protective of public health, safety, and welfare, and the environment. \_\_\_\_ (H) \_\_\_\_\_

\_\_\_\_ (I) \_\_\_\_\_

### Definitions

For the purposes of this Restrictive Covenant, the following definitions shall apply:

"MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf.

"Owner" means at any given time the then-current title holder of all or any portion of the Property.

"RBCA" means the American Society for Testing and Materials (ASTM) document entitled, "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites," Designation E 1739-95.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 213 of the NREPA; Part 201, Environmental Remediation, of the NREPA; or the Part 201 Administrative Rules (Part 201 Rules), 1990 AACRS 299.5101 *et seq.*, shall have the same meaning in this document as in Parts 3, 213, and 201, and the Part 201 Rules, as of the date this Restrictive Covenant is filed.

#### Summary of Corrective Actions

\_\_\_\_\_(J)\_\_\_\_\_

THEREFORE,

#### 1. Declaration of Land and Resource Use Restrictions

In accordance with the CR, \_\_\_\_\_(G)\_\_\_\_\_, \_\_\_\_\_(K)\_\_\_\_\_, covenants that the Property is subject to the following restrictions:

a. Prohibited Land Uses. The Owner shall prohibit all uses of the property that are not compatible with the \_\_\_\_\_(L)\_\_\_\_\_ land use \_\_\_\_\_(L)\_\_\_\_\_ relied on by the CR and allowed under Section 21304a(2) of the NREPA, and generally described in the "Description of Allowable Uses," attached as Exhibit 3. \_\_\_\_\_(M)\_\_\_\_\_ Cleanup criteria for land use-based corrective actions are located in the Government Documents Section of the Library of Michigan.

b. Prohibited Activities to Eliminate Unacceptable Exposures to Regulated Substances. The Owner shall prohibit activities \_\_\_\_\_(N)\_\_\_\_\_ that may result in exposures above levels established in the CR. These prohibited activities include:

\_\_\_\_\_(O)\_\_\_\_\_

c. Prohibited Activities to Ensure Effectiveness and Integrity of the Corrective Action. The Owner shall prohibit activities on the Property that may interfere with any element of the CR, including the performance of operation and maintenance activities, monitoring, or other measures necessary to ensure the effectiveness and integrity of the CR.

\_\_\_\_\_(P)\_\_\_\_\_

d. Contaminated Soil Management. The Owner shall manage all soils, media, and/or debris located on the Property in accordance with the applicable requirements of Sections 21304b and 20120c of the NREPA; Part 111, Hazardous Waste Management, of the

NREPA; Subtitle C of the Resource Conservation and Recovery Act, 42 USC Section 6901 *et seq.*; the administrative rules promulgated thereunder; and all other relevant state and federal laws.

2. MDEQ Access. The Owner grants to the MDEQ and its designated representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the CR , including the right to take samples, inspect the operation and maintenance of the corrective action measures and inspect any records relating to them, and to perform any actions necessary to maintain compliance with Part 213 and the CR.

3. Conveyance of Property Interest. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the terms of the CR and this Restrictive Covenant. A copy of this Restrictive Covenant shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest in accordance with Section 20116(3) and Section 21310a(2)(c) of the NREPA.

4. Audits Pursuant to Section 21315 of the NREPA. This Restrictive Covenant is subject to audits in accordance with the provisions of Section 21315 of the NREPA, and such an audit may result in the finding by the MDEQ that this Restrictive Covenant is not protective of the public health, safety, and welfare, and the environment.

5. Term of Restrictive Covenant. This Restrictive Covenant shall run with the Property and is binding on the Owner; future owners; and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. This Restrictive Covenant shall continue in effect until the MDEQ or its successor determines that regulated substances no longer present an unacceptable risk to the public health, safety, or welfare, or the environment, and may only be modified or rescinded with the written approval of the MDEQ.

6. Enforcement of Restrictive Covenant. The State of Michigan, through the MDEQ, and \_\_\_\_\_(G)\_\_\_\_\_ may individually enforce the restrictions set forth in this Restrictive Covenant by legal action in a court of competent jurisdiction.

7. Disclaimer. This Property contains regulated substances in excess of the concentrations developed as the unrestricted residential criteria under Section 21304a(2) of the NREPA. The MDEQ recommends that prospective purchasers or users of this Property undertake appropriate due diligence prior to acquiring or using this Property and undertake appropriate actions to comply with the requirements of Section 20107a of the NREPA.

8. Severability. If any provision of this Restrictive Covenant is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provision of this Restrictive Covenant, which shall continue unimpaired and in full force and effect.

9. Authority to Execute Restrictive Covenant. The undersigned person executing this Restrictive Covenant is the Owner, or has the express written permission of the Owner \_\_\_\_\_(Q)\_\_\_\_\_, and certifies that he or she is duly authorized to execute and record this Restrictive Covenant.



IN WITNESS WHEREOF, \_\_\_\_\_(G)\_\_\_\_\_ has caused this Restrictive Covenant, \_\_\_\_\_(A)\_\_\_\_\_, to be executed on this \_\_\_\_\_(R)\_\_\_\_\_.

\_\_\_\_\_(G)\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_(S)\_\_\_\_\_  
COUNTY OF \_\_\_\_\_(S)\_\_\_\_\_

\_\_\_\_\_(T)\_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_(U)\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

Drafted by: \_\_\_\_\_

Name: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

**CONSENT OF OWNER**

I, \_\_\_\_\_(A)\_\_\_\_\_, the current and legal Owner of the Property, do hereby consent to the recording of this Restrictive Covenant and authorize \_\_\_\_\_(B)\_\_\_\_\_ to file this Restrictive Covenant with the \_\_\_\_\_(C)\_\_\_\_\_ County Register of Deeds for recording:

\_\_\_\_\_(A)\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_(D)\_\_\_\_\_  
COUNTY OF \_\_\_\_\_(D)\_\_\_\_\_

\_\_\_\_\_(E)\_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_(F)\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

**EXHIBIT 1**

**LEGAL DESCRIPTION OF PROPERTY**

**SAMPLE**

**EXHIBIT 2**

**SURVEY OF THE PROPERTY**

**OR**

**SURVEY OF THE PROPERTY AND LIMITS OF LAND OR RESOURCE USE RESTRICTIONS**

SAMPLE

**EXHIBIT 3**

**DESCRIPTION OF ALLOWABLE USES**

SAMPLE

EXHIBIT 4

CONSENT OF EASEMENT HOLDERS

As evidenced below by my signature, I agree and consent to the recording of the land use and resource use restrictions specified in this Restrictive Covenant.

\_\_\_\_\_(A)\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_(B)\_\_\_\_\_  
COUNTY OF \_\_\_\_\_(B)\_\_\_\_\_

\_\_\_\_\_(C)\_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_(D)\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_



NOTICE OF AESTHETIC IMPACT  
INSTRUCTIONS FOR FORM EQP3887

This document provides instruction for Form EQP3887, which must be used in compliance with Section 21304a(4), Section 21316, and R299.5709 of NREPA<sup>1</sup> when the corrective actions at a site result in a final remedy that exceeds either the Tier 1 aesthetic criteria or an adverse taste or odor threshold.

The content of the Notice of Aesthetic Impact (Notice) is subject to approval by the Michigan Department of Environmental Quality (MDEQ). If the Notice is found to be deficient, it must be corrected and re-recorded with the Register of Deeds. In accordance with Section 21311a(2) of the NREPA, if the Notice addresses contamination that has migrated or will migrate off site, MDEQ approval and permission of the affected property owner(s) of the Notice must be obtained prior to recording with the Register of Deeds. A copy of the Notice and proof of recording with the Closure Report (EQP3843) must be submitted to the appropriate MDEQ District Office at the address listed in form EQP4410. Form EQP3887 must be completed in its entirety. The recording requirements for instruments filed with Michigan county Register of Deeds offices are contained in Section 1 of the Recording Requirements Act, 1937 PA 103, as amended (Act 103), MCL 565.201. Act 103 is available at, <http://legislature.mi.gov/doc.aspx?mcl-act-103-of-1937>.

The lettered instructions below explain what information should be *inserted* into the corresponding blank shown on the Sample Notice of Aesthetic Impact. Drafting notes and insertion directions appear as bold italicized print.

- A. MDEQ Reference No. NAI-RRD-213-[YR]-[number]  
*In order to ensure the protectiveness, enforcement, and tracking of institutional controls, all institutional controls require that an MDEQ Reference Number be assigned and predominantly displayed on the first page of the document. The MDEQ Reference Number can be obtained from the MDEQ, Remediation and Redevelopment Division (RRD), [deq-rrd@michigan.gov](mailto:deq-rrd@michigan.gov), or 517-373-7818.*
- B. *Enter name of county where site is located.*
- C. *Enter address location of Property, including city or township and county.*
- D. *Enter the Part 213 site name and facility ID number.*
- E. *Enter the date of the Final Assessment Report (FAR) or Closure Report (CR).*
- F. *Enter the name of owner or operator as defined by Section 21303 (a) or (b) of NREPA that is proposing the FAR or CR and filing this NAI.*
- G. *Insert the following sentence if the NAI applies only on-site:*  
The adequacy of the corrective actions undertaken pursuant to the [FAR or CR] may not have been reviewed by the MDEQ.

<sup>1</sup> Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA)

H. **Select the appropriate option based upon the proposed restricted area:**

**OPTION 1: To be used if the entire property is subject to this NAI. Note: A mortgage survey of the Property may be used for this purpose if one is already available. Insert the following:**

Exhibit 2 provides a survey of the Property that is subject to this Notice.

**OPTION 2: To be used if not all of the Property is subject to this NCA. Note: In this case, a mortgage survey is not appropriate, and a survey and legal description for both the Property and the specific areas of the Property that will be subject to this NAI. Insert the following:**

The "Survey of Property and Limits of Aesthetic Impact," attached as Exhibit 2, provides a survey and legal description of the Property and survey and legal descriptions that distinguish those portions of the Property that are subject to the land and resource use restrictions specified in this Notice.

I. **Insert a paragraph appropriate to the site conditions similar to one of the following examples that briefly describes the affected media, the nature of the regulated substances released, and how the corrective actions address unacceptable risks for all relevant pathways requiring restrictions.**

**EXAMPLE:** Hazardous substances associated with gasoline including toluene, ethyl benzene and xylenes, trimethylbenzenes, and methyl-tert-butyl ether were released from an underground storage tank resulting in contamination of the Property. Concentrations of the contaminants remain present at levels that exceed aesthetic-based cleanup criteria, but do not exceed applicable health-based drinking water values. This Notice has been recorded on the Property to provide notice to prospective purchasers of the presence of regulated substances at concentrations which impart aesthetic impacts.

**EXAMPLE:** Though no hazardous substances have been detected and or remain (choose one) above health based or aesthetic criteria, a release from an underground storage tank system has still resulted in petroleum contamination on the Property imparting an adverse taste and or odor to the groundwater. The residual petroleum contamination is not believed to pose an unacceptable risk to human health and this Notice has been recorded on the Property to provide notice to prospective purchasers of the presence of this aesthetic impact.

J. **Insert the following as appropriate to the site conditions:**

Declaration of Exceedance of Aesthetic-Based Cleanup Criteria

Declaration of Adverse Taste or Odor

K. **Insert the following information as appropriate to the site conditions:**

In accordance with the FAR, the following regulated substance(s) is (are) present in concentrations that exceed aesthetic criteria. The MDEQ has determined that aesthetic impacts including adverse taste and odor characteristics to groundwater occur when concentrations exceed those listed below.

**List each regulated substance(s) that exceed its respective aesthetic criteria, but are below the health based criteria. List the aesthetic-based Tier 1 criterion for the applicable regulated substances and the maximum concentrations documented at the site.**

**Example**

<b>CONTAMINANTS</b>	<b>TIER 1 AESTHETIC DRINKING WATER CRITERION</b>	<b>MAXIMUM CONCENTRATIONS</b>
Methyl-tert-butyl ether	40 parts per billion (ppb)	
Ethylbenzene	74 ppb	
1,2,4-trimethylbenzene	63 ppb	
1,3,5-trimethylbenzene	72 ppb	
toluene	790 ppb	
xylenes	280 ppb	



**OR**

***Insert the following paragraph:***

Currently the groundwater exhibits an adverse taste or odor though no regulated substance has been identified which exceeds either the health-based or aesthetic criteria. Based on groundwater analysis, these impacts are not expected to have any adverse health effects.

**L. *Select the appropriate option based on the circumstances detailed below:***

***If regulated substances detected at the Property include contaminants that have established health-based drinking water criteria, insert the text of Paragraph A. If the regulated substances detected at the Property include contaminants for which health-based drinking water criteria have not been established, and if the MDEQ concurs that Paragraph B is applicable insert the text of Paragraph B. If both are applicable, insert the text of both Paragraphs A and B. Note it is the responsibility of the persons proposing this NAI to supply the necessary data to support the conclusion of Paragraph B.***

***Paragraph A:***

However the presence of (insert hazardous substance(s) listed above) at the detected concentration is below the level determined to be harmful to human health as established by Section 5 of the Safe Drinking Water Act, 1976 PA 399, as amended, MCL 325.1005; or other applicable health-based criteria established pursuant to Part 213. Owners of property subject to this Notice are ineligible for state assistance for water supply replacement when the concentration of regulated substances in the supply exceeds aesthetic criteria but is below, and will remain below, health-based drinking water criteria.

***Paragraph B:***

Currently, groundwater at the property exhibits an adverse taste or odor, related to a substance(s) for which no health based or aesthetic criteria have been established. However, based upon an analysis of the concentrations of (insert regulated substance previously listed) detected in the groundwater underlying the Property and available toxicological data, (insert regulated substances previously listed) at (this or these) concentration(s) (is or are) not expected to have any adverse health effects.

**M. *Insert the following sentence if hazardous substance concentrations in soil located on the Property pose a threat of groundwater contamination at concentrations exceeding the aesthetic groundwater criteria:***

The Owner also acknowledges that surface and subsurface soils found on the Property must be managed in accordance with the requirements of Section 20107a, 21304b, and 20120c of the NREPA and other applicable state and federal laws.

**N. *Insert the date as:***

{Day of the month}, day of, {month}, {year}.

**O. *Insert Notary Public information as:***

Name of state  
County

**P. *Insert the appropriate form of acknowledgment set forth in Section 29 of the Michigan Notary Public Act, 2003 PA 238, as amended, MCL 55.289, (available at <http://legislature.mi.gov/doc.aspx?mcl-55-261>).***

**Example acknowledgment form for a corporation:**

Acknowledged before me in \_\_\_\_\_ County, Michigan, on \_\_\_\_\_, \_\_\_\_\_(year)  
by Mary Doe, president of X company, a Michigan corporation, for the corporation.

**Q. *Print, type or stamp name of notary public.***

**CONSENT OF OWNER ATTACHMENT:**

*This form is only necessary if the current property owner and person signing the NCA is not the same person. This document provides the express written permission of the current property owner for recording.*

- A. *Enter the name of current property owner.*
- B. *Enter the name of the person recording the document.*
- C. *Enter the name of the county where the property is located.*
- D. *Insert Notary Public information as:*  
Name of state  
County
- E. *Complete the appropriate form of acknowledgment set forth in Section 29 of the Michigan Notary Public Act, 2003 PA 238, as amended, MCL 55.289,.*
- F. *Print, type or stamp name of notary public.*

**EXHIBIT 1 LEGAL DESCRIPTION OF PROPERTY**

*This exhibit must provide the legal description of the property, including parcel identification numbers(s) of the Property.*

**EXHIBIT 2 SURVEY OF PROPERTY OR**

**SURVEY OF PROPERTY AND LIMITS OF LAND AND RESOURCE USE RESTRICTIONS**

*This exhibit must be titled as appropriate for the restricted area.*

*All surveys must: be conducted by a licensed surveyor; identify, clearly delineate, and graphically depict the spatial extent of all restricted areas in relation to the Property boundaries and the key features of the corrective action, including monitoring wells and permanent markers if required; and provide a legal description of the restricted areas of the Property.*

**SAMPLE NOTICE OF AESTHETIC IMPACT  
FINAL ASSESSMENT REPORT**

MDEQ Reference No. NAI-RRD-213-\_\_\_\_(A)\_\_\_\_

This Notice of Aesthetic Impact (Notice) was recorded with the \_\_\_\_ (B) \_\_\_\_ County Register of Deeds to protect public health, safety, and welfare, and the environment by describing environmental conditions existing at the property located in \_\_\_\_ (C) \_\_\_\_ and legally described in the attached Exhibit 1 (Property).

The Property is associated with \_\_\_\_ (D) \_\_\_\_ for which a Final Assessment Report (FAR) was conducted under Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* Corrective actions that were implemented to address environmental contamination are fully described in the FAR dated \_\_\_\_ (E) \_\_\_\_\_. A copy of the FAR is available from the Michigan Department of Environmental Quality (MDEQ) Remediation and Redevelopment Division District Office.

The FAR required the recording of this Notice with the \_\_\_\_ (B) \_\_\_\_ County Register of Deeds to notify the public of environmental conditions at the Property which exceed the aesthetic criteria established pursuant to Section 21304a(2) of the NREPA. This Notice is based upon information available at the time the FAR was implemented by \_\_\_\_ (F) \_\_\_\_\_. Failure of the corrective action to achieve and maintain the criteria and requirements specified in the FAR; future changes in the environmental condition of the Property or changes in the cleanup criteria developed under Section 21304a(2) of the NREPA; or the discovery of environmental conditions at the Property that were not accounted for in the FAR may result in this Notice not protecting public health, safety, and welfare, and the environment. \_\_\_\_ (G) \_\_\_\_.

\_\_\_\_ (H) \_\_\_\_

Definitions

For the purposes of this Notice, the following definitions shall apply:

"MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf.

"Owner" means at any given time the then-current titleholder of all or any portion of the Property.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 213 of the NREPA; Part 201, Environmental Remediation, of the NREPA; or the Part 201 Administrative Rules (Part 201 Rules), 1990 AACS R 299.5101 *et seq.*, shall have the same

meaning in this document as in Parts 3, 213, and 201, and the Part 201 Rules, as of the date this Notice is filed.

Summary of Corrective Actions

\_\_\_\_(I)\_\_\_\_

**THEREFORE,**

1. \_\_\_\_ (J) \_\_\_\_

\_\_\_\_ (K) \_\_\_\_.

\_\_\_\_ (L) \_\_\_\_

\_\_\_\_ (M) \_\_\_\_

2. MDEQ Access. The Owner grants to the MDEQ and its designated representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the FAR, including the right to take samples, inspect the operation and maintenance of the corrective action measures and inspect any records relating to them, and to perform any actions necessary to maintain compliance with Part 213 and the FAR.

3. Conveyance of Property Interest. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the terms of the FAR and this Notice. A copy of this Notice shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest in accordance with Section 20116(3) and Section 21310a(2)(c) of the NREPA.

4. Audits Pursuant to Section 21315 of the NREPA. This Notice is subject to audits in accordance with the provisions of Section 21315 of the NREPA, and such an audit may result in the finding by the MDEQ that this Notice is not protective of the public health, safety, and welfare, and the environment.

5. Term of Notice. This Notice shall run with the Property and is binding on the Owner; future owners; and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. This Notice may only be modified or rescinded with the written approval of the MDEQ.

6. Enforcement of Notice. The State of Michigan, through the MDEQ, and \_\_\_\_ (F) \_\_\_\_ may independently enforce this Notice by legal action in a court of competent jurisdiction.

7. Disclaimer. This Property contains regulated substances in excess of the concentrations developed as the unrestricted residential criteria under Section 21304a(2) of the NREPA. The MDEQ recommends that prospective purchasers or users of this Property undertake appropriate due diligence prior to acquiring or using this Property and undertake appropriate actions to comply with the requirements of Section 20107a of the NREPA.

8. Severability. If any provision of this Notice is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provision of this Notice, which shall continue unimpaired and in full force and effect.

9. Authority to Execute Notice. The undersigned person executing this Notice is the Owner, or has the express written permission of the Owner, and certifies that he or she is duly authorized to execute and record this Notice.

SAMPLE

IN WITNESS WHEREOF, \_\_\_\_\_(F)\_\_\_\_\_ has caused this Notice of Aesthetic Impact, MDEQ Reference No. NAI-RRD-213-\_\_\_\_\_(A)\_\_\_\_\_, to be executed on this \_\_\_\_\_(N)\_\_\_\_\_.

\_\_\_\_\_(F)\_\_\_\_\_

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Title

STATE OF \_\_\_\_\_(O)\_\_\_\_\_  
COUNTY OF \_\_\_\_\_(O)\_\_\_\_\_

\_\_\_\_\_(P)\_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_(Q)\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

CONSENT OF OWNER

I, \_\_\_\_\_(A)\_\_\_\_\_, the current and legal Owner of the Property, do hereby consent to the recording of this Notice of Aesthetic Impact and authorize \_\_\_\_\_(B)\_\_\_\_\_ to file this Notice of Aesthetic Impact with the \_\_\_\_\_(C)\_\_\_\_\_ County Register of Deeds for recording:

\_\_\_\_\_(A)\_\_\_\_\_

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Print or Type Name

Its: \_\_\_\_\_  
Title

STATE OF \_\_\_\_\_(D)\_\_\_\_\_  
COUNTY OF \_\_\_\_\_(D)\_\_\_\_\_

\_\_\_\_\_(E)\_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_(F)\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

**EXHIBIT 1**

**LEGAL DESCRIPTION OF PROPERTY**

**SAMPLE**



EXHIBIT 2

SURVEY OF THE PROPERTY

OR

SURVEY OF THE PROPERTY AND LIMITS OF AESTHETIC IMPACTS

SAMPLE

## SAMPLE NOTICE OF AESTHETIC IMPACT CLOSURE REPORT

MDEQ Reference No. NAI-RRD-213-\_\_\_\_(A)\_\_\_\_\_

This Notice of Aesthetic Impact (Notice) was recorded with the \_\_\_\_ (B) \_\_\_\_ County Register of Deeds to protect public health, safety, and welfare, and the environment by describing environmental conditions existing at the property located at \_\_\_\_ (C) \_\_\_\_ and legally described in the attached Exhibit 1 (Property).

The Property is associated with \_\_\_\_ (D) \_\_\_\_ for which a Closure Report (CR) was conducted under Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (NREPA), MCL 324.21301 *et seq.* Corrective actions that were implemented to address environmental contamination are fully described in the CR dated \_\_\_\_ (E) \_\_\_\_\_. A copy of the CR is available from the Michigan Department of Environmental Quality (MDEQ) Remediation and Redevelopment Division District Office.

The CR required the recording of this Notice with the \_\_\_\_ (B) \_\_\_\_ County Register of Deeds to notify the public of environmental conditions at the Property which exceed the aesthetic criteria established pursuant to Section 21304a(2) of the NREPA. This Notice is based upon information available at the time the CR was implemented by \_\_\_\_ (F) \_\_\_\_\_. Failure of the corrective action to achieve and maintain the criteria and requirements specified in the CR; future changes in the environmental condition of the Property or changes in the cleanup criteria developed under Section 21304a(2) of the NREPA; or the discovery of environmental conditions at the Property that were not accounted for in the CR may result in this Notice not protecting public health, safety, and welfare, and the environment. \_\_\_\_ (G) \_\_\_\_\_.

\_\_\_\_ (H) \_\_\_\_\_

### Definitions

For the purposes of this Notice, the following definitions shall apply:

“MDEQ” means the Michigan Department of Environmental Quality, its successor entities, and those persons or entities acting on its behalf.

“Owner” means at any given time the then-current titleholder of all or any portion of the Property.

All other terms used in this document which are defined in Part 3, Definitions, of the NREPA; Part 213 of the NREPA; Part 201, Environmental Remediation, of the NREPA; or the Part 201 Administrative Rules (Part 201 Rules), 1990 AACRS R 299.5101 *et seq.*, shall have the same

meaning in this document as in Parts 3, 213, and 201, and the Part 201 Rules, as of the date this Notice is filed.

Summary of Corrective Actions

\_\_\_\_(I)\_\_\_\_

THEREFORE,

1. \_\_\_\_ (J) \_\_\_\_

\_\_\_\_ (K) \_\_\_\_

\_\_\_\_ (L) \_\_\_\_

\_\_\_\_ (M) \_\_\_\_

2. MDEQ Access. The Owner grants to the MDEQ and its designated representatives the right to enter the Property at reasonable times for the purpose of determining and monitoring compliance with the CR, including the right to take samples, inspect the operation and maintenance of the corrective action measures and inspect any records relating to them, and to perform any actions necessary to maintain compliance with Part 213 and the CR.

3. Conveyance of Property Interest. A conveyance of title, easement, or other interest in the Property shall not be consummated by the Owner without adequate and complete provision for compliance with the terms of the CR and this Notice. A copy of this Notice shall be provided to all future owners, heirs, successors, lessees, easement holders, assigns, and transferees by the person transferring the interest in accordance with Section 20116(3) and Section 21310a(2)(c) of the NREPA.

4. Audits Pursuant to Section 21315 of the NREPA. This Notice is subject to audits in accordance with the provisions of Section 21315 of the NREPA, and such an audit may result in the finding by the MDEQ that this Notice is not protective of the public health, safety, and welfare, and the environment.

5. Term of Notice. This Notice shall run with the Property and is binding on the Owner; future owners; and their successors and assigns, lessees, easement holders, and any authorized agents, employees, or persons acting under their direction and control. This Notice may only be modified or rescinded with the written approval of the MDEQ.

6. Enforcement of Notice. The State of Michigan, through the MDEQ, and \_\_\_\_ (F) \_\_\_\_ may independently enforce this Notice by legal action in a court of competent jurisdiction.

7. Disclaimer. This Property contains regulated substances in excess of the concentrations developed as the unrestricted residential criteria under Section 21304a(2) of the NREPA. The MDEQ recommends that prospective purchasers or users of this Property undertake appropriate due diligence prior to acquiring or using this Property and undertake appropriate actions to comply with the requirements of Section 20107a of the NREPA.

8. Severability. If any provision of this Notice is held to be invalid by any court of competent jurisdiction, the invalidity of that provision shall not affect the validity of any other provision of this Notice, which shall continue unimpaired and in full force and effect.

9. Authority to Execute Notice. The undersigned person executing this Notice is the Owner, or has the express written permission of the Owner, and certifies that he or she is duly authorized to execute and record this Notice.

SAMPLE

IN WITNESS WHEREOF, \_\_\_\_\_(F)\_\_\_\_\_ has caused this Notice of Aesthetic Impact, MDEQ Reference No. NAI-RRD-213-\_\_\_\_\_(A)\_\_\_\_\_, to be executed on this \_\_\_\_\_(N)\_\_\_\_\_.

\_\_\_\_\_(F)\_\_\_\_\_

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Title

STATE OF \_\_\_\_\_(O)\_\_\_\_\_  
COUNTY OF \_\_\_\_\_(O)\_\_\_\_\_

\_\_\_\_\_(P)\_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_(Q)\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

CONSENT OF OWNER

I, \_\_\_\_\_(A)\_\_\_\_\_, the current and legal Owner of the Property, do hereby consent to the recording of this Notice of Aesthetic Impact and authorize \_\_\_\_\_(B)\_\_\_\_\_ to file this Notice of Aesthetic Impact with the \_\_\_\_\_(C)\_\_\_\_\_ County Register of Deeds for recording:

\_\_\_\_\_(A)\_\_\_\_\_

By: \_\_\_\_\_  
Signature

Name: \_\_\_\_\_  
Print or Type Name

Its: \_\_\_\_\_  
Title

STATE OF \_\_\_\_\_(D)\_\_\_\_\_  
COUNTY OF \_\_\_\_\_(D)\_\_\_\_\_

\_\_\_\_\_(E)\_\_\_\_\_

\_\_\_\_\_  
Notary Public Signature

\_\_\_\_\_(F)\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
County of \_\_\_\_\_  
My commission expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

**EXHIBIT 1**

**LEGAL DESCRIPTION OF PROPERTY**

SAMPLE

EXHIBIT 2

SURVEY OF THE PROPERTY

OR

SURVEY OF THE PROPERTY AND LIMITS OF AESTHETIC IMPACTS

SAMPLE